

IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

205 (03 cases)

CWP No.13497 of 1998 (O&M)

Reserved on : April 19, 2024

Pronounced on : May 28, 2024

1. Kulwinder Singh and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CWP No.14262 of 1998 (O&M)

2. Nimarta

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CWP No.14820 of 1998

3. Kuldeep Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Navkiran Singh, Advocate
for the petitioners in CWP No.13497 of 1998.

Mr. Sandeep Singh Majithia, Advocate
for the petitioners in CWP No.14262 of 1998.

None for the petitioner in CWP No.14820 of 1998.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

Mr. D.V. Sharma, Senior Advocate with
Ms. Sunder Kumari, Advocate for Respondent Nos.5, 6, 8, 9, 17, 19,
28, 29 & 39 in CWP -13497 - 1998 & CWP No.14820 of 1998 and
for Respondent Nos. 7, 8, 10 to 15, 19, 21, 67, 76, 77, 78 to 85
in CWP No.14262 of 1998.

Mr. Malkiat Singh, Advocate
for Respondent No.2 in CWP No.14820 of 1998 and
for Respondent No.3 in CWP No.14262 of 1998.

NAMIT KUMAR, J. (Oral)

1. This Judgement shall dispose of CWP No.13497 of 1998, CWP No.14262 of 1998 & CWP No.14820 of 1998 as common question of facts and law are involved therein for adjudication. For the sake of convenience, facts are taken from CWP No.13497 of 1998.

2. The petitioners have preferred the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing the selection as well as appointments of Junior Clerks–cum-Typists made in pursuance to the Advertisement dated 26.03.1998 (Annexure P-1) issued by Respondent No.2 - The Tarn Taran Central Co-operative Bank Ltd., Tarn Taran, District Amritsar (for short 'Co-operative Bank').

3. The brief facts, as have been pleaded therein, are that in pursuance to the Advertisement dated 26.03.1998, the petitioners had applied against 48 posts of Junior Clerks–cum-Typists. The claim of the petitioners is that they were possessing essential rather better qualifications, as required against the advertised posts, even then they have not been considered for their selection to the advertised posts despite they appeared in the interview on 16.07.1998 and rather the persons, who were less meritorious than the petitioners and fell in the prohibited degree of relationship(s) being close relatives of the Board of Directors or the Members of the Selection Committee, have been selected, which is in violation of Rule 46, as enshrined in Chapter - 5 of the 'Punjab Cooperative Societies Rules, 1963' and Rule 6 (v) of the 'Punjab State Cooperative Finance Institutions Service Rules, 1958' as well as Articles 14 and 16 of the Constitution of India. Hence, this petition.

4. Pursuant to the notice of motion issued on 26.08.1998, written statement was filed on behalf of Respondent No.2 – Co-operative Bank by denying the averments made in the petition. In reply, it has been stated that the selection of the candidates in question has been made as per due process of law and rules and none of the selected candidates fall in the prohibited degree of relationship(s), as claimed, however, only one candidate namely Rashpal Singh, who was falling within the prohibited category, was appointed by the respondent-Co-operative Bank with the permission of the Registrar, Co-operative Societies, Punjab, who was the competent authority in that behalf.

The private respondents i.e. Respondent Nos.5, 6, 8, 9, 19, 28, 29 and 39 have also filed their separate replies denying the averments made in the petition and it has been specifically alleged that the petitioners have not even appeared in the typing test, which was mandatory condition for the post of Junior Clerks–cum-Typists, as per the advertisement dated 26.03.1998 (Annexure P-1) and the certificates issued by private concerns in this regard that the petitioners were having essential qualification of typing test does not determine their eligibility.

5. The sole argument which has been addressed by learned counsel for the petitioners is that some of the selected candidates, as mentioned in para no.8 of the petition, were less meritorious than the petitioners and were falling in the prohibited degree of relationship(s) being close relatives of the Board of Directors or the Members of the Selections Committee, which is violative to Rule 46, as enshrined in Chapter - 5 of the 'Punjab Cooperative Societies, Rules, 1963' and Rule 6 (v) of the 'Punjab State Cooperative Finance Institutions Service, Rules, 1958'. The petitioners in CWP No.14262 of 1998 and CWP No.14820 of 1998 have also pressed the same root of controversy alleging therein that they have also

applied for various other posts like Junior Accountant, Junior Clerk-cum-Typists, Clerk-cum-Data Entry Operator, Steno–Typist and Peon-cum-Chowkidar in terms of advertisement in question and their candidature have also not been considered for appointment against the respective posts on account of nepotism.

6. *Per contra*, learned counsels for the respondents submit that the selection process of the advertised posts is perfectly valid and reiterated the stand taken in their written statements/replies.

7. I have heard learned counsel for the parties and perused the record.

8. Admittedly, the petitioners had applied for the post of Junior Clerks–cum-Typists in pursuance to the Advertisement dated 26.03.1998 (Annexure P-1), which was issued by the Tarn Taran Central Co-operative Bank Ltd., Tarn Taran, District Amritsar and they have not appeared in the typing test, which was an essential as well as pre-requisite qualification for selection to the post of Junior Clerks–cum–Typists.

The entire controversy in the instant case revolves around Rule 46 of the Punjab Cooperative Societies Rules, 1963 and Rule 6(v) of the Punjab State Cooperative Finance Institutions Service Rules, 1958, as the sole grievance of the petitioners is that some of the selected candidates fall in the ambit of prohibited category of relationship(s) and despite that they have been selected. The aforesaid Rules, thus, reads as under:-

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“ *The Punjab Cooperative Societies Rules, 1963*
(Chapter – 5)

Rule 46 : *Appointment Of Relatives to Any Office* :- *Save in a producers co-operative society no relative of any member of the committee or of any other officer or a co-operative society shall be appointed to any office in the*

co-operative society, except with the previous sanction of the Registrar. ”

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The Punjab State Cooperative Finance Institutions Service Rules, 1958

Rule 6 (v) : Appointment to the service: *No employee of the Bank shall at any time be related to any member of the Board of Directors. If he happens to be so related, as defined in SO 7.17 viz (a) any one related to the person concerned, or to his wife through a common ancestor who is not more remote than a great grandfather, and (b) anyone married to a person falling under (a) then the employee shall be deemed to have been removed from the service from the same date on which this fact after having been brought to the notice of any officer of the Bank/Registrar, is brought by the latter, to the notice of such an employee.*

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9. So far as the claim of the petitioners *qua* violation of Rule 46 of the Punjab Cooperative Societies Rules, 1963 in the selection process of all categories of posts is concerned, none of the such selected candidates in any category of posts do fall within the prohibited degree of relationship(s), except one candidate namely Rashpal Singh, who though was falling within the prohibited category but was appointed by the Respondent-Bank with the permission of Registrar, Co-operative Societies, Punjab, being the competent authority, as detailed in the written statements filed by the respondents. No replication has been filed by the petitioners in any of the case to controvert this stand/reply of the respondent bank. The respondents in their separate replies have

also denied the allegation of their actual relationships with any of the Board of Directors or Members of the Selection Committee and the same has never been controverted by the petitioners, at any stage, so this allegation of the petitioners does not hold any water.

Further, a perusal of the written statement filed in CWP No.14282 of 1998 shows that it is a specific stand of the Respondent – Co-operative Bank in para no.4 thereof, that Petitioner No.2, the nephew of the Managing Director of the respondent-bank, who had applied for the post of Junior Accountant, has also not been called for the interview, since he was also found ineligible for the same reason i.e. he did not have the qualifications of 'O' Level Computer Course from a recognized institute of Government of India, therefore, the allegation of acute nepotism is not an acceptable ground, and, therefore, the same is also rejected.

10. So far as, violation of Rule 6(v) of the Punjab State Cooperative Finance Institutions Service Rules, 1958 is concerned, a perusal of notification dated 09.02.1978 (Annexure R-5/1) issued by the Registrar, Cooperative Societies, Punjab, shows that the Rule 6 (v) stands already deleted on 09.02.1978 prior to the date of selection in the year, 1998, so claim of the petitioners *qua* violation of said Rule, which is not even in existence at the time of selection process, cannot be considered by any stretch of imagination, so this ground also does not support the claim of the petitioners and, therefore, the same is also liable to be rejected.

11. Further, the private respondents i.e. Respondent Nos.5, 6, 8, 9, 19, 28, 29 and 39 in their separate written statements have categorically stated that the petitioners have not even appeared in the typing test and passing of the typing test was essential for selection to the post of Junior Clerks–cum-Typists,

as per advertisement dated 26.03.1998 (Annexure P-1) and the certificates issued by private concerns to the effect that the petitioners were having essential qualification of typing test does not determine their eligibility.

It is settled proposition of law that ineligible candidates do not owe any right to challenge the order of appointment of other selected candidates and the same issue *qua* appointment of the respondents, who were alleged to be lower in merit than the petitioner, came up for consideration before this Court in case titled as **'Pritpal Singh versus State of Punjab', 2018 (3) SCT 171**, wherein by rejecting the claim of the petitioner, it was held that *'when the petitioner himself was not found eligible and he had no right to challenge the order of appointment of other candidates as the selection / appointment could be challenged only by the aggrieved person.'*

To the same effect is the Judgement dated 07.07.2011 passed by this Court in case titled as **'Puran Chand and others versus State of Haryana and others', 2012 (1) SCT, 247**, wherein it has been held that *writ petition cannot be maintained by those who are yet to acquire qualification.*

In this view of the matter, when the petitioners have not appeared for typing test, they cannot be termed as eligible candidates, therefore, in view the aforesaid settled proposition of law, no right of any kind accrues in favour of the ineligible candidates for challenging the appointment of other selected candidates and, therefore, the claim of the petitioners cannot be acceded to.

12. Further, the Hon'ble Supreme Court in case titled as **'H.C. Puttaswamy and others versus the Hon'ble Chief Justice of Karnataka High Court, Bangalore and others', 1991 (1) SCT 116**, has observed as under:-

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“ 13. There is good sense in the plea put forward for the appellants.

The human problem stands at the outset in these cases and it is that problem that motivated us in allowing the review petitions. It may be recalled that the appellants are in service for the past 10 years. They are either graduates or double graduates or post graduates as against the minimum qualification of S.S.L.C. required for Second Division Clerks in which cadre they were originally recruited. Some of them seem to have earned higher qualification by hard work during their service. Some of them in the normal course have been promoted to higher cadre. They are now overaged for entry into any other service. It seems that most of them cannot get the benefit of age relaxation under Rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977. One could only imagine their untold miseries and of their family if they are left at the midstream. Indeed, it would be an act of cruelty at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection (See : Lila dhar v. State of Rajasthan, 1981(1) SCR 320 at 326.) ”

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13. To the same effect is the Judgement dated 20.01.1999 rendered by the Division Bench of this Court in case titled as **'Shanti Devi versus State of Haryana' 1999 (2) S.C.T. 575'** and Judgement dated 11.02.2011 passed by Single Bench of this Court in case titled as **'Ranbir Singh versus The Haryana State Co-operative Apex Bank Ltd., and others' 2011 (16) SCT 453.**

14. In view of the settled proposition of law as referred above, when the petitioners themselves are ineligible to be considered in the zone of selection, therefore, they cannot challenge the appointment of other selected candidates, particularly when there is no allegation of any fraud or misrepresentation on the part of such innocent appointed person, so their appointment should not ordinarily be interfered with and they cannot be subjected to ouster from service without any justifiable reason, which directly impinge economic security of such appointed

persons as well as their dependants, therefore, there is no ground, evidence or material on record to substantiate the claim of the petitioners challenging the correctness of selection list(s) in question, who have completed more than 28 years of service and are either at the fag end of superannuation or perhaps might have been superannuated and the circumstances of this peculiar case justify an humanitarian approach towards the appointed persons, therefore, finding no merit, the petitions i.e. CWP No.13497 of 1998, CWP No.14262 of 1998 & CWP No.14820 of 1998, are dismissed with no order as to costs.

15. All pending application(s), if any, shall stand disposed of.

May 28, 2024

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Whether speaking/reasoned :

Whether reportable :

(NAMIT KUMAR)

JUDGE

Yes/No

Yes/No