

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.8418 of 1994 (O&M)
Date of Decision: 22.01.2016**

Kuldip Singh

... Petitioner

Versus

Principal, Guru Nanak Dev Polytechnical
College, Ludhiana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Puneet Jindal, Sr. Advocate,
with Ms. Sakshi, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

Mr. Gaurav Grover, Advocate,
for respondent No.3.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J.

1. Challenge in this petition is to the appointment of Lakhbir Kaur to the post of Junior Scale Stenographer in the Guru Nanak Dev Polytechnical College, Ludhiana. Lakhbir Kaur is arrayed as the 3rd respondent in the petition. Appointment to the post required the approval of the Director, Punjab State Board of Technical Education, Chandigarh-respondent no.2. The consequential prayer is that such approval be directed not to be granted which if declined would nullify the appointment and bring desired relief to the petitioner.

2. The facts briefly are thus: The petitioner and the 3rd respondent applied for direct recruitment against the advertised post of Junior Scale

Stenographers published in the daily newspaper The Tribune. The petitioner was an in-service candidate working as an Attendant but was eligible to compete for direct recruitment after through proper channel. His request was granted. The petitioner belongs to the scheduled caste in its sub classification in the category of Ramdasia. The selection was interview based conducted on May 16, 1994 in the College premises. Only three candidates appeared before the Selection Committee and the 3rd respondent was declared selected on the same day. She was a general category candidate who is stated to never have submitted a caste certificate that she belongs to the scheduled caste category. She submitted her caste certificate after the interview on May 19, 1994 which was issued by the Tehsildar on May 17, 1994. Earlier the 3rd respondent was working as a Clerk in the same College but her services were terminated allegedly on account of her work and conduct when not found satisfactory. She was relieved on March 31, 1994 by order (Annex P-5) only to return back to compete for the post advertised. The petitioner asserts that the terms and conditions prescribed in the advertisement required the candidates to bring with them their original certificates at the time of interview but the 3rd respondent did not possess the caste certificate at the time of interview which was produced afterward. Therefore, the appointment of the 3rd respondent was flawed when considered in the reserved category. This is the case set up on facts in the petition.

3. Aggrieved by denial of appointment and selection of the 3rd respondent, the petitioner made a representation to the Secretary, Nankana Sahib Education Trust which runs the Guru Nanak Dev Engineering

College, Ludhiana. Till the writ was filed in June 1994 nothing was heard of on the fate of the representation.

4. The grounds of challenge in the petition are as follows; the 3rd respondent could not be treated as a scheduled caste candidate since she did not possess the certificate on the date of interview; she applied in the general category; she never mentioned in her application that she belongs to the scheduled caste category; she could not have been invited to the interview to compete as a scheduled caste candidate; the petitioner was the solitary candidate belonging to the scheduled caste category and had filed his caste certificate issued by the competent authority; moreover, preference was to be given to inhabitants and residents of village Gill who had donated land to the Polytechnic where it stood. The petitioner was a proprietor of village Gill. His experience earned in the College as an Attendant was not taken into consideration for appointment as a Junior Scale Stenographer which was wrong and lastly, it is argued that once the services of 3rd respondent were terminated by the Polytechnic then it was against the rules of good conscience and the canons of justice that she should secure an appointment to a higher post after her work and conduct was not found satisfactory as a Clerk.

5. The State entered appearance and contested the petition by filing a written statement and took the preliminary objection that the writ petition was not maintainable for non-joinder of necessary parties i.e. the Nankana Sahib Education Trust was not made party while the Managing Committee, Guru Nanak Dev Polytechnic College, Ludhiana has been impleaded as the 4th respondent and not the Managing Committee of the

Nankana Sahib Education Trust. The empowered appointing authority of the 3rd respondent which has not been impleaded as a necessary party and thus no relief could flow. It may be noted that the amended memo of parties filed on March 26, 2014 also suffers from the serious technical defect as the original one as neither Guru Nanak Dev Polytechnical College, Ludhiana, or the Punjab State Board of Technical Education or the Nankana Sahib Education Trust have been impleaded in the correct form as required by law for entertainment of the petition.

6. The respondent-Polytechnic has filed a separate written statement refuting to the averments made in the petition and explaining or rebutting them as incorrectly stated. The management took the preliminary objection that the petitioner had no vested right to appointment. His right of consideration has not been denied. Nor have any of his rights been infringed which should enable the petitioner to invoke the extraordinary civil writ jurisdiction of this Court.

7. The management has explained that by the advertisement (Annex P-1) only one temporary post of Junior Scale Stenographer was advertised which was to be filled on the basis of interview and written test. That a written test was held has not been mentioned in the petition. The petitioner's assertion that three candidates appeared for the interview was affirmed. The selection committee comprised of 10 members including a nominee of the Punjab Government. More important, it is stated that the advertisement was issued without any specification that it would be filled from reserved category alone. However, on the date of interview itself i.e. on May 16, 1994 candidates appearing for the interview were told that the

post is to be filled from amongst eligible members of the reserved category and as such they can produce proof of belonging to the reserved class within two days from the date of interview. If the 3rd respondent did not submit a caste certificate at the time of applying which was not required and had produced it later on it cannot be said that the selection and appointment of the 3rd respondent is legally bad or deserves to be faulted for not submitting her caste certificate with her application when it was not required by the advertised prescriptions of competition on open merit. That opportunity was granted later uniformly to all the candidates. It was denied that the 3rd respondent submitted the certificate on May 19, 1994. It has been categorically asserted that the services of the 3rd respondent as a Clerk were not terminated on account of work and conduct not being satisfactory but she had been rendered surplus and it is for that reason that she was relieved of her duties in the Office In-charge (Head Clerk) in CDRT.

8. The private respondent has contested the case by filing her separate written statement. In para.5 the private respondent asserts that she had previously worked with the management and they had knowledge that she belongs to a scheduled caste category. However, she was asked to produce a fresh certificate from the authorities which after verification and supply was produced and only then the appointment followed suit. She was selected on merit. Residence based preference was not to be given as canvassed by the petitioner while recruiting staff.

9. On May 30, 2001 the petitioner applied under Order 6 Rule 17 CPC for amending the writ petition on the ground that he had come into possession of vital documents which had a direct bearing on the present

case. His inquiries had revealed that the 3rd respondent in fact belonged to the backward class category and she had obtained certificate to that effect on June 05, 1990. Furthermore, the application for issuance of scheduled caste certificate was applied for by her husband Gurmet Singh by concealing and misstating material facts and these documents clinch the issue in favour of the petitioner and against the 3rd respondent. These new facts have been pleaded in para.6 of the amended writ petition. The additional documents have been placed on record as Annex P-4/A to C. In the amended memo of parties, the Managing Committee, Guru Nanak Dev Polytechnic, Ludhiana through its Secretary has been impleaded as 4th respondent. The memo is dated March 26, 2014. The amendment application was ordered to be heard with the main case vide order dated July 09, 2001. This order was passed in CM No.15065 of 2001 filed under Order 6 Rule 17 CPC.

10. 1st respondent has filed reply to the application for amendment and has contested it as not maintainable. A separate reply to the amended case has been filed through CM No.17489 of 2013. It has been pointed out therein that the writ is not maintainable against the private trust, besides the petitioner should have approached the Chairman of the trust in the first instance to ventilate his grievance and thereafter pressed for his rights before the Civil Court. The management has cited **T.M.A. Pai Foundation and others v. State of Karnataka and others**, (2002) 8 SCC 481 to contend that the Constitution Bench of the Supreme Court recognized the right of private managements to appoint staff, both teaching and non-teaching and exercise administrative control over their employees and thus

interference is not called for. In the amendment application, the petitioner seeks to dispute the appointment of the 3rd respondent on entirely new grounds to submit that she was not even a member of the scheduled caste since she later in 2001 proclaimed herself to be belonging to the backward class whereas the advertisement in itself specifies that the post advertised was not restricted for filling up under any reserved category. It is, therefore, immaterial if the caste certificate was accepted at the stage of interview when the selection has been made on merit. To this, I would add that a person appointed in the general category can always claim after appointment rights available to members of the scheduled caste for other service benefits including promotion on reserve roster points etc. in terms of the policies framed under Article 16 (4) of the Constitution of India. Furthermore, a valid certificate was issued by the competent authority and the decision of the selection committee on merits cannot be faulted on this ground alone. Thus, there is no requirement to amend the writ petition and to add additional evidence by placing documents, the reception of which is opposed. Besides, the appointment was made in 1994 i.e. seven years prior to 2001. If the initial appointment is not open to interference in open general merit it appears rather unnecessary and futile to delve into the documents placed with the amended petition by making a roving enquiry in writ jurisdiction. This part can more appropriately left to evidence adduced in a civil suit, if one was filed, to claim relief.

11. Having considered the arguments advanced on either side at length, I do not find any merit in this petition worth interference. The advertisement did not broadcast the solitary post to be filled in any

particular manner or from any reserved category candidate, either SC or BC. The selection was open to all candidates. If a last minute decision was taken at the stage of interview asking the contesting candidates to furnish caste certificates within time specified and if the 3rd respondent submitted those certificates her right to appointment based on selection antecedent to the date of interview remains the controlling factor alone open to judicial review in its secondary character. If a decision was taken as admitted in the written statement of the 1st respondent the decision cannot be said to be palpably arbitrary, grossly unreasonable or taken in a mala fide manner only to promote the interest of the 3rd respondent. The petitioner has not alleged personal mala fides against any of the respondents, in argeundo, even if taken to be correctly impleaded. None of them were called upon to personally answer the averments in the petition as filed or in amended form where the fatal defects remain on the record of the judicial file. The petitioner competed for the post and was unsuccessful in his attempt and thereupon cannot turn around after disappointment and assail the selection as arbitrary, illegal and unconstitutional. So far as maintainability of the petition is concerned, it is decided in favour of the petitioner. It is not disputed that the institution receives 95% grants-in-aid from the Punjab Government and the management is therefore without doubt amenable to writ jurisdiction.

12. This Court has read the contents of CM No.4318 of 2014 for placing on record amended memo of parties and also for production of documents. Multiple issues have been raised in the application dated March 26, 2014 supported by an affidavit. Some of them appear not to be entirely

irrelevant to the issue but still these averments have not been made either in the original petition or in the amended writ petition and no further amendment of the petition has not been sought for. Neither have the respondents been called upon by application to admit or deny the contents or the new material or to explain them. It is, therefore, not possible to return any findings thereon. It has been pointed out that when notice of motion was issued on June 17, 1994 the appointment of the 3rd respondent was made subject to decision of the writ petition and, therefore, it is claimed by the petitioner that interference should necessarily follow. The question is not whether interference should necessarily follow but whether interference is called for at all by writ of certiorari and mandamus.

13. The other question is whether interference is called for after 22 years of the appointment. The further question is whether the petitioner can be directed to be appointed as a Junior Scale Stenographer by nullifying the appointment of the 3rd respondent. When a holistic view is taken of the whole picture painted before the court in the chain of trial of questions to be answered then it appears neither possible or equitable to hold that the appointment of the respondent No.3 is per se illegal or unconstitutional and in flagrant breach of mandates in Articles 14 and 16 of the Constitution measured on the touchstone of the public advertisement (Annex P-1) which did not enumerate or specify the mode and manner in which the selection would be made on reservation basis. Merely because caste certificates were demanded at the time of interview from the three candidates in the fray it cannot be concluded that all hell had broken loose, thereby eclipsing the process of selection sufficient to vitiate it by a court declaration. In the

procedure adopted no grave fault, illegality or irregularity has been pointed out by the petitioner sufficient to non-suit the 3rd respondent and send her packing home after a lapse of 22 years. No fundamental right of the petitioner has been violated by the selecting authority in the recruitment process in 1994 where the petitioner failed to make the grade. Lastly, I may say that it is not the case of the petitioner that there was an available scheduled caste vacancy existing or carried forward which had to be filled by only a scheduled caste candidate. In any event none was advertised.

14. For the foregoing reasons I am unable to persuade myself to quash the appointment of the 3rd respondent. Even if I were to for any reason, in arguendo, even then the writ would be futile since it would not automatically follow that a corresponding mandamus will also issue to direct the respondents management to appoint the petitioner. At best the exercise would have to be ordered to be redone with right in both the petitioner and the 3rd respondent to compete afresh, not to mention the rights guaranteed by the equal opportunity clause in Article 14 which would put both of them affright. The game would not be worth the candle. Accepting the petition, particularly at this long distance of time, would be judicial recognition of what is described in the worn out phrase i.e. “dog in the manger” attitude.

22.01.2016
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(RAJIV NARAIN RAINA)
JUDGE