

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

Civil Writ Petition No. 9420 of 2004(O&M)

Date of Decision: April 8 , 2016.

Sudarshan Kumar PETITIONER (s)

Versus

State of Haryana and another RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. D.S.Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate
for the petitioner.

Mr. Anil Mehta, DAG, Haryana
for respondent No.1.

Mr. Raman B.Garg, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

MAHESH GROVER, J.

The petitioner seeks appointment to the Haryana Civil Services (Judicial Branch) and prays for an appropriate writ to be issued in this regard.

The petitioner belongs to Scheduled Caste – B category and desirous to be appointed to HCS (Judicial Branch), he participated in the

process issued pursuant to the advertisement dated 12.03.2000 where 12 vacancies of HCS (Judicial Branch) were intended to be filled up. Out of such 12 vacancies, six were meant for General category and remaining six for Scheduled Caste category, which in turn were split up between SC-A and SC-B category in equal proportions i.e., three vacancies each.

The result declared on 30.08.2000 indicated the name of petitioner at Sr. No.27.

In existence are the Haryana Civil Services (Judicial Branch) Rules where eligibility conditions are prescribed. Rule 7, in particular, is meant to be extracted hereunder:-

“7(1) No candidate shall be credited with any marks in any paper unless he obtains at least thirty three per cent marks in it.

(2) No candidate shall be called for the viva-voce test unless he obtains at least fifty per cent qualifying marks in the aggregate of all the written papers and thirty-three per cent marks in the language paper, Hindi (in Devnagri Script).

Provided that the candidates belonging to Scheduled castes, scheduled tribes and backward classes shall be called for the viva-voce test if they obtain forty-five per cent marks in the aggregate of all the written papers and thirty three per cent marks in the language paper, Hindi (in Devnagri script).”

The High Court took a decision on 19.04.2000 communicated to the State on 20.07.2000, which may also be extracted hereunder:-

“Hon'ble the Chief Justice and Judges have been pleased to decide that a candidate who had secured less than 50% marks in the aggregate of written examination and viva-voce may not be appointed to HCS (Judicial Branch) unless there are very compelling reasons to lower the standard.”

Since the petitioner had secured less than 50% marks in aggregate, in written examination and viva-voce, he was ousted from the process of consideration. Four persons however challenged the decision of the High Court by way of Civil Writ Petitions bearing Nos.16902 of 2000, 979 of 2001, 4923 of 2001 and 19940 of 2001. The judgment was rendered in CWP No.16902 of 2000 (Rajinder Pal Singh v. State of Haryana and others) on 24.09.2003 where this Court has held in Para 31 as follows:-

“31. Analytical examination of the provisions contained in the rules and judgments afore-cited leave no doubt in our mind that it was not mandatory for the concerned quarters to amend the rules before enforcing the clause contained in the letter of the High Court dated 5.5.2000 or 20.7.2000. It was only a parameter for the purposes of appointment of plea of higher merit. The law is consistent in this regard that higher marks than the eligibility conditions can always be introduced by the competent authority for the purposes of maintenances of higher standards in service and in furtherance to its policy decision taken in the interest of administrative excellence. We have already held that the letter of the High Court does not lack any inherent jurisdiction or competence. The infirmity has resulted from the inaction of the Government in not accepting the suggestion of the High Court and implementing

The petitioner's case is that once persons similarly situated as him and ousted from selection on account of the aforesaid restriction of the High Court, approached this Court successfully, the door for selection would open to him as well, more particularly when in terms of the Rule 8 it was mandatory upon the State to send five additional names keeping in view the reservation policy for filling up of unforeseen vacancies (occurring within one year from the date of publication of the result of examination). In the year 2001, State did advertise more posts and the petitioner, thus, claims that in view of the anticipated vacancies which indeed did occur within one year of the declaration of the result of an earlier selection, the non-compliance of this Rule has resulted in denial of appointment which he otherwise would have legitimately gained if compliance of the Rule had been made.

The respondents oppose this prayer and contend that once the power of the High Court to supplement the Rule to ensure merit has been acknowledged to be valid, the petitioner who did not make the grade in the year 2000 and chose to remain silent by not impugning the action of the High Court, cannot derive any benefit from the ratio of Rajinder Pal's case (supra) where this Court had allowed the writ petitions even though upholding the power of the High Court to provide an additional benchmark than the one prescribed by the Rules. Besides, it is stated by them that when advertisement in the year 2001 was made, the petitioner did not raise this issue even at that time.

Both these objections are sought to be repelled by learned

counsel for the petitioner who contend that it is only because of the aforesaid Rule that petitioner was precluded from the zone of consideration. It is for this reason that he did not make any attempt to seek enforcement of his right through the court finding himself outside the zone of consideration.

Apart from this, learned counsel for the State has also referred to the facts and the existing vacancies to contend that five vacancies which were advertised in the year 2001 were consumed by three writ petitioners and only two vacancies remained which, in any case, would have gone to the Scheduled Caste category i.e., one to SC-A and one to SC-B and even in this eventuality, the petitioner would have not made the grade.

We have considered the matter in some detail and find that the writ petition cannot succeed. Firstly, the petitioner did not raise this issue at the first available opportunity to him. By presuming himself to be outside the zone of consideration in view of the decision of the High Court he virtually acquiesced to it. No question was raised by him regarding more names to be recommended against the unforeseen vacancies. It is only in the year 2003 when the petitions of some persons were accepted that he chose to rake up the issue. By that time, it was too late as the subsequent selections in the year 2001 also stood finalized. If the prayer of the petitioner is accepted at this stage it would obviously result in unsettling some incumbents who are by now well entrenched in service, besides, none of them has been impleaded as party in the writ petition.

We are, thus, of the considered opinion that no relief can be

granted to the petitioner in the present writ petition.

Dismissed.

(MAHESH GROVER)
JUDGE

April 8 , 2016.
'om'

(LISA GILL)
JUDGE