

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12116 of 2014 (O&M)

Date of Decision: 28.03.2016

Hardev Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

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

Present: Ms. Satpreet Grewal Kapila, Advocate,
for the petitioners.

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

RAJIV NARAIN RAINA, J.

1. For the fault of one, the rest of the group cannot be punished.

The person who impersonated in the type test for one of the candidates prescribed for considering cases for promotion to the post of Clerk from amongst eligible Class-IV employees. In the type test held in January 2014 the four petitioners qualified at the prescribed speed. However, in the same test one Charanjit Kaur also appeared but asked someone to impersonate her in the test. On discovery of this, which is actually an offence under section 419 IPC, the entire result of the type test was scrapped, leaving the petitioners in a lurch.

2. Mr. Manuja informs the court that Charanjit Kaur was proceeded against departmentally and inflicted the major punishment of stoppage of five increments with cumulative effect.

3. The only question to be determined in this case is whether one

rotten apple will spoil the basket. It would be very unfair I think to hold that for the act of Charanjit Kaur the petitioners should be disadvantaged when they made a clean breast of the finishing tape. The petitioners have an accrued, vested and crystallized right for consideration for promotion on qualifying the type test and have a concomitant right not to be re-tested after long passage of time when they have lost interest in their defeat. If they all failed to clear the next type test set for them within six months after the debacle caused by Charanjit Kaur it cannot be seen as waiver or acquiescence of their rights already settled in the previous January test. It would also be no sustainable argument to suggest that because they succumbed to the re-test signing on the dotted line they have lost their right forever emanating from the result of the earlier type test. To view the case in such a manner would be looking at it from the wrong angle.

4. In selection matters, the Court is concerned with two aspects. One is whether the entire selection is vitiated by fraud, nepotism and things like that as explained in **Union of India v. O. Chakardar**, 2002 (3) SCC 146 in a case where irregularity committed in the process of selection is all pervasive vitiating the whole selection. In that event it would not be required that each selectee be served with individual show cause notice. In such circumstances it will be open to cancel the whole selection or on the other hand if the dispute is confined to individual grievance based on whether a particular candidate should or should not have been selected or appointed, which could be for multifarious reasons which have nothing to do with upsetting the entire selection process as a defective one, then the selection deserves to be upheld making allowance for adjustment of

individual grievances. See also on the point the judgment in **Krishna Yadav v.State of Haryana**, 1994 (4) SCC 165 on improper selection tainted by malafides. In short, the entire selection must be vitiated by corruption before rescinding the recruitment process affecting the result as unacceptable in law. The impersonator and the beneficiary of impersonation should have been removed from the list in the instant case and the petitioners ought to have been considered for promotion in 2014 from Class IV to posts of clerks in Class III without faulting the success of the petitioners as against whom allegations of fraud were not apt and should not be not have been imputed to scrap the result altogether.

5. As a result of the reasons recorded above, this petition has substantial merit is thus allowed. A writ of certiorari is issued quashing the decision dated June 12, 2014 (P-3) scrapping the type test qua the petitioners and their cases deserve to be separated to the exclusion of the bad penny, namely, Charanjit Kaur who subverted justice. As a result, the cases of the petitioners for promotion to the post of Clerk is directed to be considered with retrospective effect from the date deemed fit by the department with reference to date of occurrence of vacancies in the promotional post in case they are otherwise eligible.

(RAJIV NARAIN RAINA)
JUDGE

28.03.2016
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