

CWP No.6896 of 2010 (O&M)

#1# Manoj Kumar
2016.10.17 17:23
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CWP No.6896 of 2010 (O&M)

Bindu and Another

....Petitioners

Vs.

State of Punjab and Ors.

....Respondents

2. CWP No.9454 of 2010 (O&M)

Avon Kumar Vaid

....Petitioners

Vs.

State of Punjab and Ors.

....Respondents

3. CWP No.10045 (O&M)

Dheeraj Gumber

....Petitioners

Vs.

State of Punjab and Ors.

....Respondents

4. CWP No.12706 of 2010 (O&M)

Satvir Singh

....Petitioners

Vs.

State of Punjab and Ors.

....Respondents

5. CWP No.435 of 2011 (O&M)

Vijay Pal Singh

....Petitioners

Vs.

State of Punjab and Ors.

....Respondents

6. CWP No.8072 of 2010 (O&M)

Gurpreet Singh

....Petitioners

Vs.

State of Punjab and Ors.

CWP No.6896 of 2010 (O&M)

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....Respondents

7. CWP No.7889 of 2010 (O&M)

Prince

....Petitioners

Vs.

State of Punjab and Ors.

....Respondents

Date of decision: 13th July,2016

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. R.K. Arora, Advocate for the petitioner(s)

(in CWP No.7889 of 2010).

Mr. Dharam Vir Sharma, Senior Advocate with

Ms. Akshita Chauhan, Advocate for the petitioner(s)

(in CWP No.435 of 2011).

Mr. Amit Jhanji, Advocate for the petitioner(s)

(in CWP No.8072 of 2010).

Mr. S.K.Sharma Budhladewala, Advocate

for the petitioners in CWP No.12706 of 2010.

Ms. Sudeepti Sharma, Deputy Advocate General, Punjab.

Mr. N.S. Dandiwal, Advocate for respondent No.5.

Ms. Deepali Puri, Advocate for respondents No.7,

10, 12, 13, 68 and 94.

Mr. Mukesh Kumar Bhatnagar, Advocate

for respondents No.8, 9 and 11.

Ms. Ravinder Kaur Manaise, Advocate

for respondent No.15.

Mr. Surajpreet Singh Kang, Advocate for

Mr. S.S. Sidhu, Advocate for respondents No.18 to 20.

Mr. A.K.Chopra, Senior Advocate with

Ms. Amrit Grewal, Advocate

for respondents no.20,24, 25, 26, 30, 31,34,35,

36,41, 72,74,77,78,83,84,85,90 and 97.

Ms. Seema Arora, Advocate for

Mr. C.M.Munjal, Advocate for respondents no.23 and 25.

(in CWP No.7889 of 2010)

and for respondent no.4 (in CWP No. 6896 of 2010).

Ms. Balpreet Sidhu, Advocate for respondents no.27 & 52.

Mr. Kapil Kakkar, Advocate for respondents no.32
(in CWP No.7889 of 2010) and for respondent no.5
(in CWP Nos. 9454 and 12706 of 2010).

Mr. Harjot Singh Bedi, Advocate for respondent No.37.

Mr. Vipin Mahajan, Advocate for 39, 40 & 42.

Mr. Amit Mehta, Advocate for
respondents No.43, 79 and 80.

Mr. Rahul Rampal, Advocate for respondents No.60,63,64.

Mr. A.K. Walia, Advocate for
respondents No.62, 65, 66 & 69.

Mr. Surjit Singh Swaich, Advocate for respondent no.67.

Mr. A.D.S.Bal, Advocate for respondent no.82.

Mr. Ramneek Vasudeva, Advocate
for respondents No.88 & 89.

Mr. Mandeep Singh Dhaliwal, Advocate
for respondent No.93.

Mr. M.S.Saini, Advocate for

Mr. P.S.Barnala, Advocate for respondent no.100.

Mr. Harsh Manocha, Advocate for respondent no.101
(all in CWP No.7889 of 2010).

Mr. Anmol Pandit, Advocate for

Mr. A.K. Bansal, Advocate for respondent No.4
(in CWP Nos.10045 and 9454 of 2010).

Mr. Vipul Aggarwal, Advocate for respondent No.3.
(in CWP No.12706 of 2010).

Mr. Mohd. Yousaf, Advocate for respondents No.4
(in CWP No.12706 of 2010).

Mr. Nakul Sharma, Advocate for respondent no.7
(in CWP No.9454 of 2010).

Mr. G.S. Nahel, Advocate for respondent No.67.

Mr. D.S.Nalwa, Advocate.

Jaswant Singh, J

Petitioners, who remained unsuccessful in the selection of
Assistant District Attorney (for short “ADA”) on contract basis
conducted by different District Level Committees in the State of

Punjab, have filed aforesaid seven writ petitions involving identical questions of law and facts with twofold reliefs namely (i) directing the official respondents to quash the selection of private respondents and (ii) to appoint them as ADAs in their districts concerned.

With the consent of the parties and for the sake of convenience, the facts are being extracted from writ petition bearing CWP No.6896 of 2010 being the lead case.

It is the case of the petitioners that an Advertisement dated 17.10.2009 (P.1) was issued by the Director, Prosecution and Litigation, Punjab-respondent No.2 herein advertising total 98 posts of ADAs in the Prosecution and Litigation Department, Punjab on contract basis and the last date of receipt of applications was 30.10.2009. The posts were bifurcated district-wise and in each District, a further categorization was made according to Reservation of posts i.e General, SC,BC etc. The selection was to be made by a District Level Committee headed by the Deputy Commissioner as its Chairman and Superintendent of Police and District Attorney of the respective Districts as Members thereof. In pursuance of the Advertisement (P.1), the petitioners applied for the post of ADAs and accordingly, they along with other candidates were considered and called for interview and private respondents were selected but the petitioners were placed in the waiting list.

Learned counsel for the petitioners has contended that the petitioner was more meritorious than the private respondents. It is also contended that respondent No.3, who was neither a practicing

Advocate, nor even a member of the District Bar Association, thus being ineligible for appointment as per the conditions stipulated in the Advertisement and even the Experience Certificate, which was procured by him, is fake. It is further contended that respondent No.4-Shiv Raj became a member of the District Bar Association, Batala only w.e.f 22.10.2009; whereas the last date for submission of the application was 30.10.2009. Therefore, he was also not eligible for the post in question. Apart from above, it is also contended that respondent No.5 was even placed at Merit List No.34 and has arbitrarily been awarded 16 marks out of 20 in the interview just in order to ensure his selection. In the connected writ petitions, arguments have been raised on similar lines.

On the other hand, learned counsel for the respondents has argued that the selection although on contract basis; but was made in a transparent and fair manner by the Selection Committee and the private respondent Nos.3 to 5 were appointed on contract basis and thereafter the State of Punjab in pursuance of Cabinet decision dated 03.10.2013 have regularized the services of private respondents along with other similarly situated candidates vide order dated 08.10.2013 (R.9/T) and as such the petition is liable to be dismissed.

Heard learned counsel for the parties and perused the case file with their able assistance.

A perusal of paper book reveals that 98 posts of ADAs were advertised on contract basis earmarked districtwise and the present case relates to district Gurdaspur for which 6 posts were there and out of which 3 posts were meant for General Category,

one for Scheduled Caste (Ex-Servicemen), one for physically handicap and one post for Backward Class. It is made clear that petitioners and private respondents belong to General Category. A perusal of the list (R.1) attached with the affidavit dated 31.8.2013 of Sh. Gurcharan Singh Dhaliwal, Joint Director, Prosecution & Litigation in compliance of order dated 24.7.2013, showing all 98 selected candidates on contract basis reveals that from district Gurdaspur, following three candidates were selected from the general category:

"GURDASPUR

1. Onkardeep Singh S/o Sh. Lakhwant 60.83

*Singh R/o Guru Ram Dass Colony
Jalundhur Road, Batala.*

2. Shivraj Singh S/o Manjit Singh 57.98

*R/o Niki nik Saran, Post Office
Talwandi Raman, Tehsil Dera
Baba Nanak, Distt Gurdaspur.*

3. Amninder Singh S/o Sh. Gurmohinder 55.40

Singh R/o 640, Krishnanagar, Gurdaspur"

A further perusal of merit list (R.1) of the candidates pertaining to district Gurdaspur attached with the reply dated 18.7.2014 filed on behalf of respondent Nos.1 & 2 reveals that the marks obtained by the petitioners and that of respondent Nos.3 to 5 clearly proves that the petitioners are lower in merit than the private respondents. A comparative chart to show the exact position in this regard is tabulated as under:

<i>"Name of Candidate</i>	<i>Marks obtained</i>
<i>Petitioner No.1 -Bindu</i>	<i>52.75</i>
<i>Petitioner No.2-Gurlal Singh Pannu</i>	<i>53.08</i>

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Respondent No.3-Onkar Deep Singh

60.83

Respondent No.4-Shiv Raj

57.98

Respondent No.5-Amninder Singh Kahlon

55.40”

As per clause 3 of the Advertisement (to be read with Advertisement), required qualification for the post in question reads as under:

“3. Required qualifications:

(i) The candidate should be an Advocate with two years practice as an Advocate.

(ii) The candidate should have passed Matriculation Examination with compulsory Punjabi or Optional Punjabi or equivalent examination in Punjabi Language as fixed by the Punjab Government from time to time.

(iii) The candidates should be permanent residents of State of Punjab.”

As per clause 4 of the essential conditions, the required qualification and Experience should have been obtained before the last date of the submission of the application form i.e 30.10.2009. Further the clause 6 of the essential conditions being relevant is also reproduced hereunder:

“6. The selection of the candidates will be done through the District Selection Committees. The recruitment on the basis of adding the merit of percentage of marks obtained in Matriculation, Graduation and LL.B higher qualifications, experience and marks obtained in the interview will be prepared. For working out the merit will be as per the following method:

i) Maximum marks as per the percentage of marks of educational and professional qualifications:

10+2 or equivalent

examination: 10

ii) Graduation+LL.B : 60

*d) Higher legal qualification LL.M or above it
maximum marks as per percentage.*

e) After two years experience : 5

*as advocate after calculating one
mark for each year maximum marks*

f) Interview:

(iii) Basic level qualities: 10

(iv) Personality

: 10

Total marks

100"

Undisputedly, in the interregnum the services of the private respondents have already been regularized by the State of Punjab on the basis of a Cabinet decision vide order dated 08.10.2013 (R.9/T) and copy of which is on record in CWP No.9454 of 2010, and the same has not been challenged till date for the reasons best known to the petitioners. So far as the allegations against respondent No.3 regarding his ineligibility is concerned, the same is emphatically denied by the official respondents in their reply and two separate Experience Certificates of even date i.e 28.10.2009 issued by the President of the Bar Association, Batala, District Gurdaspur and the President, District Bar Association, Gurdaspur in favour of respondent No.3 are attached as Annexures R.2 and R.3 respectively. These Certificates clearly prove that respondent No.3 practised as a Lawyer from 25.2.2003 to 31.7.2005 at Batala and from 17.3.2008 till the date of issuance of Certificate, at Gurdaspur and both these Certificates have been

issued by the President while discharging his official duties in due course as the President of respective Bar Associations. Similarly, Annexure R.4 is the Experience Certificate dated 20.10.2009 issued by the President, Bar Association, Batala in favour of respondent No.4 also clearly proves that he practised as an Advocate at Batala since 2.9.2005 till the date of issuance of the Certificate. This Court has no reason to disbelieve the above mentioned Experience Certificates until and unless it is proved otherwise. Similarly, in the connected cases as well, this Court would have no reason to disbelieve the factual matrix raised by the State-respondents.

So far as the contention of the petitioners that they are more meritorious than the private respondents, the same is not tenable in view of the tabulation showing comparative marks obtained by both the petitioners as well as private respondents and this Court does not find any perversity or illegality with respect to the marks awarded by the Selection Committee. As per the Advertisement, district level Selection Committee was constituted and after assessment of all the candidates, the respective marks were assigned to each of the candidates as per the criteria stipulated in clause 6 reproduced hereinabove and this Court is not sitting as a court of appeal over the decision of the selection committee for awarding the marks for the purposes of selection on contract basis in view of the facts and circumstances of the present case. Likewise, similar would be the reason not to interfere with the decision of the Selection Committees for the other districts in the connected writ petitions.

A Division Bench of this court vide order dated 06.5.2009 passed in CWP No.12194 of 2008 permitted the State of Punjab to make appointment for the posts of District Attornies, Addl. District Attornies and Assistant District Attornies to be designated as Public Prosecutors, Addl. Public Prosecutors and Assistant Public Prosecutors respectively on contractual basis purely as a stop gap arrangement till the regularly appointed candidates become available. In pursuance of the said directions, respondent Nos.1 & 2 issued the Advertisement (P.1) for making the selection of 98 ADAs (Group B Posts) on contract basis by the District level Selection Committees comprising of three members headed by a Deputy Commissioner. The said arrangement was not a substitute for the regular selection on the post of ADAs governed by the Punjab Assistant District Attorneys Grade-II (Class-III) Service Rules, 1989 but purely to tied over the situation as the working in the Subordinate Courts had come to standstill and the undertrials were languishing in Jails for years on account of the non-availability of the adequate number of Prosecutors due to ban imposed on regular appointments by the Government. In order to ameliorate the situation, a direction was given by the Division Bench for making the contractual appointments; but it seems that the respondents-State have construed the said arrangement as a substitute for the regular recruitment of the private respondents as ADAs (governed by Statutory Rules) and ultimately approving the same by way of Cabinet decision as well as regularisation order dated 08.10.2013. But whatever may be the reasons for the State; but one thing is clear that the Division Bench of this Court

had never intended to give a leverage to the State first to resort for the contractual appointment and then to controvert the same on regular basis as has been done in the present case. Since now much water has flown and the contractual status of the private respondents along with other similarly situated ADAs have been converted (rightly or wrongly) to that of regular as per the Government's decision dated 08.10.2013 and the said decision is not under challenge. Consequently, this Court has no choice except to dismiss the writ petition, *inter alia*, on the ground that the status of contract appointments no longer exists. It is also not understood as to how a joint merit of the selected candidates by different Selection Committees of different districts could be jointly computed either for the purpose of appointment or for determining their inter se placement.

However, the dismissal of the writ petition should not be construed that this court is putting a seal on the legality and validity of the regularisation made vide order dated 08.10.2013 on the posts of ADAs now governed by the amended Statutory Rules, namely, Punjab Prosecution and Litigation (Group-B) Service Rules, 2010, notified on 17.8.2012, which is a Class-II post, upon which no regularization could be made as per the mandate of Hon'ble Supreme Court in **Secretary, State of Karnataka & Ors. Vs. Uma 1 Page 2 Devi (3) & Ors., (2006) 4 SCC 1.**

The selections in the present case, although on contractual basis, was made by the so-called district level Selection Committee and the said Committee has not even been impleaded as party respondent, being necessary and proper and

thus on this ground also the writ petition is liable to be dismissed.

In view of the aforesaid discussion, there is no merit in all the writ petitions and the same are dismissed.

13th July, 2016
manoj

(JASWANT SINGH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No