

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(103)

CWP No. 17141 of 2016 (O&M)

Date of decision: 02.09.2016.

Gurpreet Singh

.....Petitioner.

Versus

State of Punjab and others

.... Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. P.S. Jammu, Advocate, for the petitioner.

S.S. SARON, J.

The petition has been filed for issuing a writ in the nature of mandamus directing the State of Punjab through its Secretary, Department of Home Affairs and Justice, Chandigarh (respondent No.1) to appoint an Enquiry Commission in the entire State of Punjab relating to scandal in the recruitment of 7654 posts of teaching and non-teaching staff in pursuance of an advertisement dated 23.09.2009 (Annexure P1) in the Education Department. The petitioner alleges that in the Education Department of the Punjab Government there are number of candidates who have been appointed in the teaching as well as non-teaching staff even though they did not apply for the post; besides, they had not gone through the selection process and were straightway issued appointment letters. This, according to the petitioner, has been done in connivance with the higher officials of the Education Department, as number of candidates having lesser marks have been appointed by ignoring candidates higher in merit.

The Principal Secretary, Department of Education (respondent No.2) advertised various posts in the Education Department including teaching and non-teaching staff vide advertisement published in the newspaper on 23.9.2009 (Annexure P1). A total number of 7654 teaching and non-teaching staff members were recruited pursuant to the said advertisement. The process of selection was outsourced through the Centre of Development of Advance Computing, Mohali (respondent No.10) ('C-DAC' - for short). All the candidates were to apply to the C-DAC (respondent No.10) through online. After scrutiny of each and every application, the C-DAC (respondent No.10) prepared a comparative merit of each and every candidate based on the academic qualifications of the candidates. On the basis of the merit list prepared by C-DAC (respondent No.10), the candidates appeared before Committees that were constituted for the counselling. Separate Committees were constituted for the male and female candidates. The Committee for selection of male candidates was chaired by Sh. Sadhu Singh Randhawa, Director, Education Department (Elementary), while that for the female candidates was chaired by Smt. Neelam Bhagat, State Council of Educational Research and Training (SCERT), Punjab. The counselling was conducted by the said Committees and after counselling, the final selection list was sent to the C-DAC for issuing appointment letters to the candidates. It is submitted that from the above said 7654 posts, the non-teaching posts were as follows:-

(i)	Senior Laboratory Attendants	450 posts
(ii)	Assistant Librarian	316 posts
(iii)	Library Restorers	281 posts

From amongst the posts for the teaching staff, there were various posts of Lecturers to Masters/Mistresses including vocational Masters/Mistresses/Art and Craft Teachers etc.

The petitioner alleges that in the recruitment process, the officials of the respondents committed mischief and they got appointment letters issued to number of their own persons/relatives who had not even applied through C-DAC (respondent No.10). The petitioner, it is submitted, had applied through proper procedure i.e. the C-DAC (respondent No.10). He applied through an Internet Café at Kharar-Mohali and he has the acknowledgement slip also with him. He paid Rs.50/- as the requisite fee by way of demand draft. The petitioner states that he was duly selected in the selection process and appointed to the post of Senior Laboratory Attendant. He joined the said post on 30.07.2011. He performed his duties to the satisfaction of his senior officers. However, all of a sudden he was removed from the post on the allegation that he had not applied through C-DAC (respondent No.10) and that his appointment letter was fake and forged; besides, had been issued in connivance with the father of the petitioner, who was working as a Senior Assistant with the Director, Public Instructions (Secondary Education), Punjab School Education Board Complex, Mohali (respondent No.3). An FIR was also registered against the petitioner and his father. The police report ('challan') was filed after investigation. Later, during the departmental enquiry as well as inquiry by the police, it was revealed that appointment letters had been issued to number of such candidates, who had not even applied and despite that the appointment letters had been issued to the candidates in connivance with officials of the

Director, Public Instructions (Secondary Education), Punjab School Education Board Complex, Mohali (respondent No.3). The petitioner has placed on record a copy of the departmental enquiry (Annexure P2) that was conducted against him; besides, he has placed on record an enquiry report (Annexure P3) of three other candidates of districts Bathinda, Ferozepur and Sri Muktsar Sahib whose appointment letters were not found to be genuine. The petitioner states that even in his case, a proper enquiry was not conducted by the authorities.

Learned counsel for the petitioner has laid emphasis on the said enquiry report (Annexure P3) to contend that the enquiry appears to have been conducted in three districts only i.e. in the districts of Ferozepur, Bathinda and Sri Muktsar Sahib. It was found that one Smt. Gurpreet Kaur was issued an appointment letter and she had joined, however, her name was not in the selection list prepared by the Chairman, Selection Committee. There were no signatures of the Deputy Director Smt. Pankaj Sharma (respondent No.5), on her appointment letter. Her original appointment letter was not available in the Ferozepur office. It was observed that the candidate had been made to join her duty with the connivance of the officers/officials of the district office. Besides, there were somewhat similar discrepancies and infirmities in respect of two other candidates namely Sarvshri Ruldu Ram and Udhay Pal Singh. Apart from the above, the files of some other candidates, who were not allowed to join, had been obtained/received during checking conducted by the Committees at District Education Office (Secondary Education), Ferozepur, Sri Muktsar Sahib and Bathinda on 11.04.2012 and 12.04.2012. On comparison of the original selection list,

fake appointment letters were found to be issued to candidates. The details of the same were mentioned therein. The Committee recorded that it would be appropriate to register criminal cases against the candidates appointed on the basis of fake appointment letters along with the orders restraining them from joining their official duties; besides, the record of district offices in the State of Punjab was required to be checked.

A perusal of the enquiry report (Annexure P3), it is submitted, shows that the Enquiry Committee had specifically observed that in pursuance of the advertisement dated 30.9.2009, appointments throughout the State of Punjab were required to be checked as there may be number of persons who had been issued forged and fabricated appointment letters. Despite the said observation of the Enquiry Committee, the respondent-department, it is submitted, has not conducted a thorough enquiry all over Punjab with regard to the recruitment scam in the Education Department.

Smt. Pankaj Sharma, Deputy Director, School Education (respondent No.5) was one of the Committee members in the enquiry reports (Annexures P2 and P3). She, it is submitted, was also in fact a part and parcel in issuing forged and fabricated appointment letters to various candidates. In a separate departmental enquiry, she has been charge-sheeted vide charge-sheet dated 20.03.2013 (Annexure P4). An enquiry as such has also been initiated against her. However, the same enquiry officer was appointed as an enquiry officer for conducting the enquiry against the petitioner which is evident from the enquiry report Annexure P2 and against others vide enquiry report Annexure P3. Therefore, according to the petitioner, she court not be appointed as a member of the Enquiry

Committee and this shows that the Enquiry Committee had intentionally not conducted an enquiry all over Punjab and had conducted an enquiry only in the case of the petitioner; besides, it had not taken any action against the nine persons who were found guilty in the enquiry Annexure P3.

It is submitted that out of 7654 posts, about hundred candidates were those who had been appointed through forged and fabricated appointment letters and the names of said persons who had not even applied for the posts and their names also did not figure in the list prepared by C-DAC (respondent No.10) yet their names were inserted in the selection list; besides, some candidates whose names did not figure in the selection list were given appointment letters. A departmental enquiry has also been initiated against Smt. Neelam Bhagat, now retired Deputy Director (School Education). She was charge-sheeted vide Annexure P5 as she had issued appointment letters to persons who were lower in merit. This showed that she was part and parcel of the recruitment scam.

The grievance of the petitioner is that despite the scam in the recruitment process of the teaching and non-teaching staff of the Education Department, a thorough enquiry has not been conducted and even FIRs have not been registered.

We have given our thoughtful consideration to the matter.

The case relates to recruitment of teaching and non-teaching staff made in pursuance of the advertisement dated 23.9.2009 (Annexure P1). The petitioner was selected in pursuance of the said advertisement and had joined on 30.7.2011. Later, his appointment letter was found to be forged as it was alleged that his father Sh. Mohinder Singh was working as

Senior Assistant in the Director Public Instructions (Secondary Education), Education Punjab School Education Board Complex, Mohali (respondent No.3). FIR is also registered against the petitioner and his father, Sh. Mohinder Singh. It is, therefore, to be noticed that till 30.7.2011 when the petitioner had joined and continued in service, there was no scam. It is only when the petitioner himself has been removed that he seeks that a thorough enquiry be conducted in the matter of the illegalities and irregularities that are said to have been committed. In an enquiry that was conducted, the petitioner was also found to have produced an improper or a fake appointment letter. It is in continuation of the enquiry dated 20.04.2012, it was found that the appointment letter which had been produced/presented by the District Education Officer, Ajitgarh in respect of the petitioner was a photocopy and he had given in writing that it was not the original copy of the appointment letter. It was found that the name of the petitioner was not in the selection list, but an appointment letter had been issued. The petitioner, therefore, was removed from service; besides, an FIR also stands registered against him. Therefore, the petitioner would not have any *locus standi* by way of the present petition in the nature of public interest to proceed against others. It is for the State Government to take action against all who have committed criminal offences and are liable. In fact, the petitioner himself has submitted and mentioned that enquiry is going on against Smt. Pankaj Sharma, Deputy Director, School Education (respondent No.5) in pursuance of charge-sheet dated 20.03.2013 Annexure P4. Besides, departmental enquiry has also been initiated against Smt. Neelam Bhagat, now retired Deputy Director, School Education vide charge-sheet Annexure

P5. However, the grievance of the petitioner is that there are many others who have fake appointment letters. It is to be noticed that in fact an FIR has been registered and it is for the police to investigate into the matter. In case the petitioner has grievance or has material with him against the others, he can approach the police and provide necessary information which he is even otherwise bound to do so for the irregularities that are said to have been committed. Merely because action is not being taken against similarly placed persons who are also said to have committed forgeries in their appointment letters without the necessary particulars being available, it would be improper to carry out a fishing enquiry in exercise of the writ jurisdiction of this Court. In case an order for initiating criminal process against others has not been passed, it would not be a ground for exonerating the petitioner as well. The petitioner cannot invoke the writ jurisdiction for issuing a mandamus for appointment of an Enquiry Commission.

In Mani Subrat Jain v. State of Haryana, AIR 1977 SC 276, it was held that it is well settled that no one can ask for a mandamus without a legal right. There must to be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something.

The petitioner in the circumstances in case is aggrieved by the inaction by the State authorities in not taking action against other similarly placed persons, who have been selected on the basis of improper and fake appointment letters may seek his remedy with the authorities concerned;

however, he himself being proceeded against for committing irregularities and improprieties in the selection process, cannot seek a mandamus from this Court to proceed against others as well.

The case with respect to the petitioner after his selection on 30.7.2011 and, thereafter, his removal is already subject matter of challenge in another writ petition filed by him, which is not mentioned in the present petition, although during the course of hearing the same has been mentioned. In the circumstances, it would be iniquitous for this Court to go into the question as regards the merits of the case of the petitioner himself and this aspect would require consideration in the writ petition filed by him. In the present public interest litigation, at the behest of a somewhat similarly placed accused the Court is not to initiate a process for proceeding against others, especially when there is no other specific material against others and the material that has been furnished against others are being proceeded against.

Accordingly, for the afore-mentioned reasons, the present writ petition being devoid of merit is dismissed.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

02.09.2016
SwarnjitS

Note:-

Whether speaking/reasoned : Yes

Whether Reportable : Yes