

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

CWP No.20903 of 2016

Date of Decision: 04.10.2016

Hakam Singh and others

....Petitioners

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Pankaj Jain, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *mandamus* directing the respondent-State to consider the claim of the petitioners on the posts of Canal Patwaris advertised through public notice dated 10.09.2016 as they have already been selected in pursuance of earlier Advertisement dated 15.05.1995.

Briefly, the facts of the case, as made out in the present petition, are that the petitioners applied for the posts of Canal Patwaris in pursuant to advertisement dated 15.05.1995. They were selected on the basis of Screening Test conducted on 04.08.1996, result of which was declared on 23.12.1996. However, petitioners could not be appointed as 'Model Code of Conduct' was imposed due to assembly elections. They made representations and ultimately, filed ***CWP No.6395 of 1997***, which was disposed of vide order dated 09.05.1997 directing respondent Nos.1

and 2 to consider the claim of the petitioners. Subsequently, it was conveyed to the petitioners that the Canal Patwaris have become surplus as the Punjab Government has decided to supply free water and electricity to the farmers. Thereafter, the petitioners again filed **CWP No.13208 of 2003**, which was dismissed on **28.04.2009**. It was held in the said judgment that the selection process was withdrawn on the basis of financial crises and the petitioners were not having any indefeasible right of appointment. Subsequently, vide public notice dated 10.09.2016, 857 posts of Canal Patwaris have been advertised. The petitioners are having a preferential right over the said posts as earlier they were selected but were not appointed. It is also mentioned that the posts have been advertised but there is an amendment in the service Rules and the minimum eligibility condition has been raised from Matric to Graduation.

Learned counsel for the petitioners submits that the stand of the respondent-State is contradictory as earlier it was mentioned that the Model Code of Conduct was imposed but subsequently it was because of free supply of electricity and water by the State Government and there was no requirement of Canal Patwaris. Learned counsel also submits that the respondent-State has played hide and seek as without considering the case of the petitioners and other similarly situated candidates, the posts of Canal Patwaris have been advertised by changing the eligibility criteria. The petitioners had participated in the selection process and they were entitled to be considered against the posts advertised subsequently. At the end, learned counsel for the petitioners submits that the action of the respondent-State is violative of Articles 14 and 16 of the Constitution of India as they have been denied their right of employment without affording any sufficient

reason and as such, they are entitled to be considered for appointment against the posts, which have been subsequently advertised on 10.09.2016.

Learned counsel for the petitioners has relied upon the judgment of Hon'ble the Apex Court in case ***State of Punjab and others vs Harcharan Singh and others (Civil Appeal No.3521 of 2006)***, decided on **07.02.2007** in support of his contentions.

Heard the arguments of learned counsel for the petitioners and have also perused the documents available on the file.

Admittedly, the petitioners applied for the posts of Canal Patwaris in pursuant to advertisement dated 15.05.1995, vide which, 280 posts were advertised. The minimum qualification for the said post was matric. Petitioners were selected on the basis of Screening Test and their names even figured in the list of successful candidates. Before the stage of interview, the elections were declared in the State of Punjab on 31.12.1996 and Model Code of Conduct came into operation due to assembly elections. Filing of ***CWP No.6395 of 1997*** and ***CWP No.13208 of 2003*** are not disputed. Said petition was disposed of vide order dated 09.05.1997 by directing respondents No.1 and 2 to consider the claim of the petitioners and to decide the same. Similarly, ***CWP No.13208 of 2003*** was dismissed by this Court vide order dated 28.04.2009 by holding that since the selection process was withdrawn on the basis of financial crises, the petitioners were not having any indefeasible right of appointment. It was also held that the appointments were withheld by the respondents for bona-fide reasons.

Petitioners are claiming their right of consideration against the posts of Canal Patwaris issued in pursuance of public notice dated

10.09.2016 only on the ground that they were duly selected earlier and are having right to be considered against the posts of Canal Patwaris advertised subsequently. Not only the delay is there in claiming the right of the petitioners against the posts which have been advertised in the month of September, 2016 as the petitioners have qualified the Screening Test on 23.12.1996 and the minimum eligibility condition has been raised from matric to graduation. Moreover, **CWP No.13208 of 2003** filed by the petitioners had already been dismissed by this Court vide Order dated 28.04.2009 by holding that the selection was legally withdrawn on the basis of financial crises. Petitioners were not having any indefeasible right of appointment as the appointing authority was fully entitled to withhold the appointment for bona-fide reasons. The petitioners have no right to claim the posts, which have been advertised subsequently i.e. after a delay of more than 20 years. Moreover, the appointment cannot be claimed as a matter of right and that too after a long delay like the present case.

It has been held in various judgments of Hon'ble the Apex Court as well as of this Court that mere selection does not create any indefeasible right to appointment unless there is any discrimination or juniors in merit have been appointed ignoring the higher merit of the petitioners. Moreover, the public authority cannot be compelled to make appointments as discretion remains with the authority to make appointment as has been held in the judgment of Hon'ble the Apex Court in **Baitarani Gramiya Bank vs Pallab Kumar and others 2003(4) SCT 321**.

Hon'ble the Apex Court, in a judgment rendered by a Constitution Bench in **Shankarsan Dash v. Union of India 1991(3) SCC**

47, observed as under :-

“ Even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken *bonafide* for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.”

In *Union Territory of Chandigarh v. Dilbagh Singh and others 1993(1) SCC 154*, Hon'ble the Apex Court has observed as follows :-

“ A candidate who finds a place in the select list as a candidate selected for appointment to a civil post does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. He could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no *bonafide* reasons. Hence such candidate, even if he has a legitimate expectation of being appointed due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for *bonafide* and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration accepted the complaints

and cancelled the select list it cannot be said to have acted either arbitrarily or without *bonafide* and valid reasons.”

Same view has been observed in judgment of Hon'ble the Apex Court in *Mohanan vs. State of Kerala 2000(3) SCT 1075 (SC)* and of this Court in case *Indian Council of Agricultural Research vs Mohinder Kumar Sharma 1996(1) SCT 833*; judgments of Kerala High Court in cases *Rajan Pillai A.S and etc. vs State of Kerala and others 2003(1) SCT 717*; *State Bank of Travancore v. Mini 2001(2) Ker LT (SN) 64*.

The judgment relied upon by learned counsel for the petitioners is not applicable keeping in view the facts and circumstances of the present case as the earlier petition filed by the petitioners has been dismissed by passing a detailed order.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioners and the petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

04.10.2016
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

No