

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22881 of 2014 (O&M)
Decided on : 12.05.2016

Gurdhian Singh & others

... Petitioners

Versus

State of Punjab & another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Amandeep Sharma, Advocate,
for Mr.P.S.Khurana, Advocate, for the petitioners.

Mr.Kamal Sehgal, Addl.AG, Punjab.

Mr.Puneet Gupta, Advocate for respondents No.5 to 14.

Mr.A.S.Cheema, Advocate, for the applicants
(in CM-1544-CWP-2015).

G.S. Sandhawalia , J. (Oral)

CM-4898-CWP-2016

Application for placing on record additional affidavit of petitioner No.1 along with letters dated 06.08.2014, 28.10.2014 (Annexures P17 & P18, respectively) and the provisional list of results of candidates in Register C and Register A-II, is allowed. Same are taken on record. Office to tag the same at appropriate place.

Main case

Petitioners seek consideration in Register A-II, as per

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the Punjab Civil Services (Executive Branch) Rules, 1976, against advertisement No.2 dated 21.04.2014 (Annexure P4).

Petitioners are aggrieved on account of the fact that they have been considered in Register C for the process years 2008, 2012 and 2013 by the respondent-Commission and therefore, challenge the said action.

It is the case of the petitioners that petitioner No.1 is presently posted as Assistant Controller (Finance & Accounts) in the office of the Financial Commissioner (Revenue). Petitioner No.2 was appointed on the post of Clerk and joined in the office of the Commissioner, Ferozepur Division and was selected and appointed as SAS on the post of Section Officer. Thereafter, he had obtained promotion to the post of Deputy Controller (Finance & Accounts) in the year 2010 and is presently working on the said post with the Government Medical College, Patiala. Similarly, petitioner No.3 was appointed on the post of Clerk in the Department of Consolidation of Holdings in the year 1984 and was selected and appointed in the SAS Cadre on the post of Section Officer in the year 1994 and thereafter, is presently working as Deputy Director (Pension), New Pension Scheme, Department of Finance, Government of Punjab.

As per the advertisement in question, for the 3 process years, the following posts were advertised:

Sr. No.	Name of Post	Process year for Register A-II and Register C	No. of Posts (Register A-II)	No. of Post (Register C)
1	Punjab Civil Service (Executive Branch)	2008	8	3
2	-do-	2012	10	3
3	-do-	2013	7	3

The cut off date was 01.11.2013. It is the case of petitioners No.1 & 2 that they had applied on-line to the Department against Register A-II. However, the Department had refused to forward the case of petitioner No.2 under Register A-II and therefore, they had applied on-line, through Register-C and their application was forwarded by the Department through Register-C. On the declaration of the screening examination held on 06.07.2014, they came to know that their names were being considered under Register-C and not under Register A-II and resultantly, the petitioners have approached this Court.

In the written statement filed by respondents No.1 to 3, plea taken was that the answering-Department had forwarded the application of the petitioners against Register-C only and it was denied that the petitioners had done any ministerial duties. The duties were mentioned in Annexure P1, which were only for accounts services personnel and not for ministerial cadre.

The respondent-Commission, in its reply,

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specifically clarified that only the first petitioner-Gurdhian Singh had applied in Register A-II whereas the other petitioners had applied in Register-C. The Finance Department had later-on clarified that petitioner No.1 was eligible in Register-C because the petitioners do not fall in the category of ministerial staff. The respondent-Commission, after considering the clarification from the Finance Department, had rightly included their name in Register-C. It is, accordingly, submitted that the petitioners No.2 & 3 were estopped from holding out to the contrary.

Counsel for the respondents have rightly relied upon the decision of this Court, in similar circumstances, which would directly apply to the case of petitioners No.2 & 3 in CWP-2775-2015 titled *Rakesh Kumar Sharma Vs. State of Punjab & others*, decided on 09.02.2016. In the said case, pertaining to the same selection, the petitioners, in that case, had also applied in Register-C and held out that they were entitled for consideration under Register A-II. The writ petitions were dismissed with costs of Rs.10,000/-, on account of concealment of facts. Relevant portion reads as under:

“The present petitions also deserve to be dismissed on an additional ground of concealment as a specific plea has been taken that the petitioners had applied on-line under Register-A-II but the Department did not process the same and the applications were processed by the Department under Register-C. The on-line application

was to be filled by the petitioner himself. The Department had only to forward a hard copy and therefore, the plea which has been taken is clearly only to bring the case within the ambit of consideration for Register-A-II. The facts have already been noticed in detail as to how the petitioners' conduct estopps them from holding out otherwise that they are entitled for consideration under Register-A-II, having applied and sat in the examination, seen the result and then, on being unsuccessful, starting to represent and then, approach this Court and burden it with unnecessary litigation, which is patently dishonest on the face of it. This Court had also been approached belatedly in December, 2014 and February, 2015."

In the present case also, if it is to be seen that admit card of petitioner No.3 was for Register C (page 76 of the paperbook), on the basis of on-line application, in Register C (page 73 of the paperbook). The fees was also deposited for Register C (page 75 of the paperbook). Similarly, for petitioner No.2, the admit card was for Register C (page 69 of the paperbook) on the basis of the fee deposited on 09.05.2014, for the said category (page 72 of the paperbook). In such circumstances, it is not tenable for them to contend that they are entitled to be considered under Register A-II, in view of the observations made in the above said case, would completely cover the case against petitioners No.2 & 3.

Coming to petitioner No.1, it is not disputed that though he had applied in Register A-II, but the Department had considered his case along with the cases of petitioners No.2 & 3, in Register C. This would be clear from the letter

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dated 28.05.2014, photocopy of which, along with the translated version, has now been placed on record as Annexures A & A/T, respectively. A perusal of the same would go on to show that the Secretary of Finance (Treasury & Accounts Branch) had forwarded the cases of all the three petitioners, along with 24 others, for consideration under Register C. In similar circumstances, in CWP-20791-2014 titled *Karam Singh & another Vs. State of Punjab & others*, decided on 11.05.2016, the same issue was subject matter of consideration. The terms of the advertisement along with the relevant rules, have been taken into consideration to note that the complete hard-copy has to be forwarded by the concerned Department, for consideration. The requisite rules and terms of advertisement had to be, accordingly, complied with. If the applications were not submitted by the Department before the cut-off date, the same could not have been considered as complete. Relevant portion of the reasoning given in Karam Singh's case (supra) reads as under:

Accordingly, this Court is of the opinion that the case of petitioner No.1 is also squarely covered against him, by the observations made above and no relief can be granted. Accordingly, the present writ petition is, hereby, dismissed.

MAY 12, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE