

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

**CWP No. 26845 of 2013
Date of Decision:- 20.12.2016**

Lalit Kumar

....Petitioner

vs.

The State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Aman Dhir, Advocate,
for the petitioner.

Mr. Avinit Avashi, AAG, Punjab.

Mr. Baltej Singh Sidhu, Advocate,
for respondent No. 4.

DAYA CHAUDHARY, J.

Petitioner has approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for setting aside the selection of respondent No. 4 to the post of Legal-cum-Probation Officer for District Child Protection Society under the Integrated Child Protection Scheme made in an illegal and arbitrary manner. A writ of Mandamus has also been sought to be issued to respondents No. 2 and 3 to consider and appoint the petitioner on the said post.

Briefly, the facts of the case, as made out in the present petition,

are that respondent No.2 had issued an advertisement for inviting applications for various categories of posts including Legal-cum-Probation Officer and Accountant for District Child Protection Society for all districts (except newly created districts Pathankot and Fazilka) under integrated Child Protection Scheme. The total number of posts were from 20 to 40 for various categories. The essential qualification for Legal-cum-Probation Officer was "Graduate in Law from any recognized University with minimum 55% marks. It was also mentioned that working knowledge of Computer, fluency in English and knowledge of Punjabi was also required and preference was to be given to the candidate having experience in handling legal matters. Petitioner, by considering himself eligible, applied for the post of Legal-cum-Probation Officer. The educational qualifications of the petitioner on that day were B. Com. with 68% and LL.B. with 64% marks. He was also having experience of 7 years as an Advocate at Civil Courts, Gidderbaha. Petitioner was also having requisite experience in Computer functioning as he had done six months' course of Data Entry Operator. He also annexed his certificate of enrollment and experience with the application form. Total three candidates including the petitioner and respondent No. 4 were called for interview. Respondent No. 4 was also having LL.B. Degree and three years' experience as an Advocate. Petitioner appeared for interview on 12.8.2013 and was selected for the post of Accountant and not for the post of Legal-cum-Probation Officer, whereas, respondent No. 4 was selected for the said post. However, petitioner did not join on the post of Accountant.

The grievance of the petitioner is that the petitioner was more

meritorious and experience holder than respondent No. 4. Petitioner came to know that there was difference of only one mark between him and respondent No. 4 as both of them were awarded 20 marks for LL.B. degree and 5 and 6 marks were granted in interview to the petitioner and respondent No. 4 respectively. Learned counsel for the petitioner submits that respondent No. 4 has been selected in illegal and arbitrary manner and that too without following any criteria. Learned counsel also submits that nothing was conveyed to the petitioner and he was orally told the reason of his rejection. His 7 years' experience was not taken into consideration. In the advertisement it was mentioned that preference was to be given to the candidate having experience of handling legal matters, whereas, respondent No. 4 was having only three years' experience as an Advocate. At the end, learned counsel for the petitioner submits that selection of respondent No. 4 be set aside and petitioner be considered for appointment being more meritorious.

In response to notice of motion, separate replies on behalf of respondents No. 1 to 3 and 4 have been filed which are on record.

A preliminary objection has been raised by learned counsel for respondent No. 4 that the present petition is not maintainable as no writ petition is maintainable against a Society and even the Society has not been impleaded as party-respondent. Learned counsel also submits that interview Committee applied a uniform criteria for selection of suitable candidates for the post in dispute and marks were specified against each head. Accordingly, marks were given to all candidates including the petitioner and selected candidate. Learned counsel for respondent No. 4 also submits that

post of Legal-cum-Probation Officer for District Child Protection Society falls under the “Integrated Child Protection Scheme” framed by the Central Government. Total 10 candidates applied for the said post including the petitioner and respondent No. 4. No written examination was conducted as number of applicants were only 10 and there was no reference of written examination in the advertisement also. The interview Committee awarded the marks to petitioner as well as respondent No. 4 as per criteria mentioned in the advertisement for basic qualification. No marks for higher qualification were given. The Committee after taking into consideration the performance in the interview awarded 5 marks to petitioner and 6 marks to respondent No.4. Both of them were awarded 20 marks each for basic qualification and petitioner secured total 25 marks (20+5) whereas respondent No. 4 secured 26 marks (20+6). Respondent No. 4 was selected being more meritorious than the petitioner and the petitioner was kept in waiting list at Sr. No. 1. Thereafter, the recommendation of the Selection Committee was sent for approval to the Deputy Commissioner. Learned counsel for respondent No. 4 submits that there is no allegation of mala-fide against the members of the Committee. Petitioner participated in the selection process but he remained unsuccessful and thereafter he challenged the selection process and the selection, whereas, he has no right to challenge after participating in the selection. Learned counsel also submits that fair and impartial approach of the Selection Committee is also clear from the fact that petitioner was selected on the post of Accountant as he applied for the said post also. Same criteria was adopted in the selection for the post of the Accountant. At the end, learned counsel for respondent

No. 4 submits that none of the candidates was awarded marks for experience as both the candidates did not produce the experience certificate dealing with child protection issues. Uniform criteria was adopted by the Selection Committee and no fault is there with the selection of respondent No. 4. Learned counsel for respondent No. 4 has also relied upon a judgment of Hon'ble the Apex Court rendered in **Tekraj Vasandi alias K.L. Bsandhi vs. Union of India and others**, 1988(3) SLR 560 and a judgment of Delhi High Court rendered in **Dr. Y.P. Gupta vs. Union of India and others**, 1975 (2) SLR 560.

In pursuance of directions issued by this Court, an affidavit was also filed on behalf of respondents No. 1 to 3 as directed by this Court vide order dated 16.8.2016 wherein clarification relating to facts as to what was the criteria with regard to relevant field has been mentioned. The criteria with regard to relevant field is the child protection issues and the experience certificate shown by both the candidates was not favouring the criteria of the experience of the relevant field and, therefore, certificates of experience of the petitioner as well as of respondent No. 4 were not considered. Both the candidates were not given any marks for higher qualification.

Heard arguments of learned counsel for the petitioner, learned State counsel as well as learned counsel appearing for respondent No. 4.

Facts relating to issuance of advertisement and submission of applications by petitioner and other candidates are not disputed. As per advertisement, the essential qualifications for the post of Legal-cum-

Probation Officer was Graduate in Law from a recognized University with

minimum 55% marks. It was also required that one should have working knowledge of Computer, fluency in English and knowledge of Punjabi. A note was there in the advertisement that preference will be given to the candidates having experience in handling legal matters. Petitioner and other candidates applied by considering themselves to be eligible. The educational qualifications of the petitioner was B.Com. and LL.B. and he also annexed 7 years' experience as an Advocate of Civil Court. Similarly, respondent No. 4 was also having LL.B. Degree and 3 years experience as an Advocate. The selection was to be made on the basis of requisite qualification + higher degree in law + percentage in law degree + experience and interview. Petitioner and respondent No. 4 were awarded 20 marks for basic LL. B. degree and 5 and 6 marks respectively in the interview. There was a difference of one mark only. The grievance of the petitioner is that experience of both the candidates has not been taken into consideration as the petitioner could have got more marks in the interview having practice of 7 years whereas respondent No. 4 was having 3 years experience as an Advocate. There was a difference of one mark only in the interview which has made the difference. During pendency of the petition, an affidavit on behalf of respondents No. 1 to 3 has been filed in compliance of order dated 16.8.2016 whereby the criteria for experience with regard to the relevant field has been clarified. The criteria with regard to relevant field has been shown to be the experience of 'child protection issue'. The experience of petitioner as well as of respondent No. 4 has not been taken into consideration which shows that uniform formula was adopted. No marks were awarded to the candidates for higher qualification,

curriculum activities, experience in relevant field dealing with child protection issues. None of the candidates was awarded marks for experience because neither the petitioner nor respondent No. 4 produced experience certificate dealing with child protection issues. The affidavit filed by Deputy Commissioner, Sri Muktsar Sahib giving clarification with regard to relevant field is reproduced as under:-

“I the above named deponent do hereby solemnly affirm and declare as under:-

1. That in compliance of the order dated 16.8.2016, whereby this Hon'ble Court has sought clarifications regarding the facts **“what was the criteria with regard to relevant field”**, in response to these facts, it is submitted that **the criteria with regard to the relevant field is the child protection issues**, so the certificate annexed as (Annexure P.8) does not fulfil criteria of experience required for the relevant field. Moreover respondent no. 4 also submits the experience certificate in same field (Annexure R1/8 in reply of present petition) as of petitioner and his experience certificate was also not considered. It is pertinent to mention here that the clarification regarding these facts have already been given in the reply filed by the answering respondents in para 4 page no. 6 (lines 9 to 13) which is reproduced as under:-

“No marks were awarded to all the candidates

appearing for the post of legal-cum-probation officer for higher qualification, curriculum activities, experience in relevant field dealing with Child Protection issues”

2. That further clarification regarding this issue has been given in para no. 6, page no. 8 (line no. 10) of the reply to the present petition, filed by the then Deputy Commissioner, Sri Muktsar Sahib, which is reproduced as under;-

“None of the candidates was awarded marks for experience because neither petitioner nor respondent produced the experience certificate dealing with child protection issues.”

It has been held in various judgments of this Court as well as judgments of Hon'ble the Apex Court that in case a candidate has taken a chance and has participated in the selection process, then he cannot turn around subsequently stating that selection process was unfair or the selection was not made on the basis of merit. A candidate, who takes a chance to get selected at the said interview and ultimately finds himself to be unsuccessful, cannot take it as a ground to challenge the selection. Moreover, writ court cannot sit as a Court of appeal and try to re-assess the relative merit of the concerned candidates who had been assessed at the oral interview by the Selection Committee/interview taking committee. It is for the the Interview committee to determine as to how the merit has to be considered. The requirement of selection is that there should be fairness in

assessing the respective merit of the candidates. It is open to the members of the Committee to make an over-all assessment of the interviewed candidates. Moreover, the validity of viva voce test cannot be judged simply on the basis of result thereof. The Selection Committee has to keep in mind the main object of assessing the candidates in the light of the guidelines given in the advertisement or under the Rules. Meaning thereby, the Interview Committee has to keep in view the overall performance of the candidates at the oral interview and while doing so, their intelligence, general knowledge, personality, aptitude and suitability have to be kept in view. The petitioner in the present case subjectively feels that he is more meritorious vis. a. vis. respondent No. 4 as he is having more experience as an Advocate than respondent No. 4 and with mala fide intention, the marks for experience have not been given.

It is in the realm of assessment of relative merit of the concerned candidates by the expert committee before whom the candidates appeared for interview. Merely, on the basis of apprehension of the petitioner or suspicion that marks for interview was not awarded deliberately and because of that reason, respondent No. 4 secured one more mark in the oral interview in comparison to petitioner, it cannot be said that process of assessment was vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is not even a whisper in the petition about any personal bias of the members of the committee against the petitioner or any mala fide have been alleged against the selection committee. It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to the

petitioner or to other candidates. It has not been proved on record that the selection committee has given any deliberate unfavourable treatment to the petitioner as he has been selected on the post of Accountant by the same committee.

Keeping in view the facts and circumstances as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner. The petition being devoid of any merit is dismissed accordingly.

December 20, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes