

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.23828 of 2015 (O & M)
Date of decision:03.10.2016

Rashtriya Valmiki Sabha (Regd.),Petitioner

v.

State of Punjab and othersRespondents

CWP No.10347 of 2016 (O & M)

The North India Scheduled Castes and Scheduled
Tribes Welfare Association (Regd.),Petitioner

v.

State of Punjab and othersRespondents

CWP No.18765 of 2016 (O & M)

Prajapati (Kumhar) Mahasangh (Regd.),Petitioner

v.

State of Punjab and othersRespondents

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

Present: Mr. J.S. Rana, Advocate for
Mr. H.C. Arora, Advocate for the petitioner in
CWP No.23828 of 2015.

Mr. J. S. Toor, Advocate for the petitioner in
CWP No.10347 of 2016.

Mr. B. S. Sidhu, Advocate for the petitioner in
CWP No.18765 of 2016.

S.S.SARON,J.

This order will dispose of CWP No.23828 of 2015, CWP No.10347 of 2016 and CWP No.18765 of 2016 as these have been filed in the nature of Public Interest Petitions and a similar prayer has been made for directing the Selection Committee to revise the results of the Punjab Civil Services (Judicial Branch) Examination, 2015 and dispense with the condition of obtaining a minimum 45 % marks in the aggregate of written examination by candidates of the Scheduled Castes and Backward Classes categories for qualifying for the viva-voce test for consideration for appointment to the Punjab Civil Services (Judicial Branch). The facts are taken from CWP No.23828 of 2015.

The petition has been filed in the nature of public interest for issuing a writ of mandamus or any other appropriate writ, direction or order for directing the Selection Committee for recruitment to Punjab Civil Services (Judicial Branch) Examination 2015 to revise the result of Punjab Civil Services (Judicial Branch) Examination, 2015 and dispense with the condition of obtaining minimum 45% in aggregate of the written examination by the candidates who are the members of Scheduled Castes category in the main written examination.

Rule 7 (2) of the Punjab Civil Services (Judicial Branch) Rule, 1951, as modified from time to time, requires that for being eligible for participating in the viva voce test for consideration for appointment as a Judicial Officer, a minimum 45% marks in aggregate in the main written examination should be obtained.

According to the petitioners, only two candidates from amongst the Balmiki and Mazhabi Sikh Categories of Scheduled Castes have qualified for participating in the viva voce test against thirteen posts reserved for the said category. In this manner, the remaining eleven posts have been rendered vacant for the time being, which are likely to be carried forward. Therefore, it is submitted that in view of an exceptional situation the requirement of obtaining 45 % marks in the aggregate of the main written test for qualifying for the viva-voce test is liable to be dispensed with for the said reserved categories.

The petitioner is a NGO, which has been set up for the welfare of the Scheduled Castes, particularly Balmikis and Mazhabi Sikhs. The petitioners' claim that the condition of 45% marks in the written paper for Punjab Civil Services (Judicial Branch) Examination, 2015 is liable to be reduced for the members of the Balmiki and Mazhabi Sikhs Categories as eleven posts are lying vacant.

The Punjab Public Service Commission in January 2015 invited applications for 118 posts of Civil Judge (Jr. Division)-cum-Judicial Magistrate in terms of the Punjab Civil Services (Judicial Branch) Rules. The reservations provided for thirteen posts for the category of Balmiki and Mazhabi Sikhs of the Scheduled Castes and twelve posts for the other Scheduled Castes category. Preliminary examination was conducted on 26.4.2015. The result was declared. According to the petitioner, there were 130 candidates who appeared in the examination from amongst the Balmiki and Mazhabi Sikhs category of the Scheduled Castes. The category wise roll

numbers (in ascending order) of candidates who qualified for viva-voce on the basis of marks secured in the Punjab Civil Services (Judicial Branch) main written examination held from 7.8.2015 to 9.8.2015 has been placed on record as Annexure P-3. According to said Annexure P-3 only two candidates from the category of Balmiki and Mazhabi Sikhs qualified the written examination for the viva-voce test for consideration for appointment to the Punjab Civil Services (Judicial Branch). However, eleven posts for the said category would not be filled as there is no other candidate who has qualified in the written examination for the viva-voce. Therefore, the petitioner submits that the condition of 45% marks in the aggregate of the written examination may be lowered to 40% for such candidates so that the vacant posts are filled. It is submitted that in terms of the Punjab Civil Services (Executive Branch) Rules, the eligibility for consideration and appearing in the viva-voce test is that the candidate must obtain 45% marks in aggregate in all the papers of the main written examination for general category and 40% percent for candidates of the reserved category namely the Scheduled Castes categories. Besides, in terms of Rule 7-A of the Punjab Civil Services (Judicial Branch) Rules, candidates belonging to Scheduled Castes who get appointment to Punjab Civil Services (Executive Branch) by getting 40% marks in aggregate of the main written examination and who may be eligible to appear in the viva-voce test, can be appointed as members of the Punjab Civil Services (Judicial Branch). Therefore, equitable consideration requires that candidates of the Scheduled Castes category who obtained 40% marks in aggregate in all the papers in the main written

examination should be considered eligible for appearing in viva voce test for the Punjab Civil Services (Judicial Branch) Examination 2015.

After giving our thoughtful consideration to the matter, we are of the view that the petitioner in fact has no locus standi to file the present petition in a service matter at the behest of third persons, who have not claimed for consideration for appointment to the Punjab Civil Services (Judicial Branch) Service of which the selection procedure has been undertaken. The question regarding filing of a petition in the nature of Public Interest in service matters by persons who are not claimants for the posts in fact is not res integra.

The Supreme Court in R.K. Jain v. Union of India, AIR 1993 SC 1769 held that the appointment of a member of the Customs, Excise and Gold Control Appellate Tribunal is not to be gone into in a Public Interest Litigation and only in a proceedings initiated by an aggrieved person, it may be open to be considered. The writ petition was also not a writ of quo-warranto. It was held that in service jurisprudence it is a settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public spirited person.

In P. Seshadri v. S. Mangati Gopal Reddy & others, (2011) 5 SCC 484, a writ petition raising disputes regarding service matter was filed before the High Court in the guise of a Public Interest Litigation by a person not concerned with the service and at the

behest of persons hiding behind the veil. It was held that the writ petition was not maintainable and should not have been entertained and should have been dismissed at the threshold.

The Supreme Court in Partap Singh v. State of Haryana (2002) 7 SCC 484 in a Public Interest Litigation filed by a legislature questioning the validity, legality and propriety of selections made by the Haryana Public Service Commission and appointments made pursuant to the selection by the State Government to the posts of District Food and Supplies Controller, held that the petitioner had no locus standi to maintain the petition as he himself was not a candidate for the said posts.

In Madan Lal v. High Court of J&K, (2014) 15 SCC 308 it was observed that the Supreme Court repeatedly held that in service matter, a Public Interest Litigation is not maintainable. Reliance was placed on Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655, and paras 14 and 15 from the said decision were quoted, which are as follows:-

14. In Ashok Kumar Pandey v. State of W.B., (2004) 3 SCC 349 this Court held thus: (SCC pp. 358-59, para 16)

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule

percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in DuryodhanSahu v. Jitendra Kumar Mishra, (1998) 7 SCC 273 this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the

petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

The same principles have been reiterated in the subsequent decisions, namely, B. Singh v. Union of India, (2004) 3 SCC 363, Dattaraj Nathuji Thaware v. State of Maharashtra, (2005) 1 SCC 590 and Gurpal Singh v. State of Punjab, (2005) 5 SCC 136.

15. The above principles make it clear that except for a writ of quo warranto, public interest litigation is not maintainable in service matters."

In view of the above it is apparent that third persons have no right to file a Public Interest Litigation in service matters. Therefore, without going into the merits of the case, the present writ petition is liable to be dismissed on the ground that the petitioner has no locus standi to file the present writ petition.

Accordingly, the writ petition is dismissed. However, this would not preclude the candidates who seek relaxation or lowering of the limit of obtaining 45% marks in the aggregate of written examination for qualifying for appearing in the viva-voce test for consideration for appointment to the Punjab Civil Services (Judicial Branch).

(S.S. SARON)
JUDGE

03.10.2016
sheetal

(LISA GILL)
JUDGE

Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes