

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2830 of 2016

Date of Decision: 12.02.2016

Raj Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Aman Pal, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The fate of the petitioner hangs on the validity of his degree. He was denied appointment despite selection under the public advertisement dated September 23, 2009 published in various newspapers including in Daily Ajit, Jalandhar for filling up posts of Lecturers (English) in Teaching Cadre in the Department of School Education (Secondary Education), Punjab. The last date of submission of applications was October 09, 2009.

2. The petitioner is a reserved category candidate who applied in advertised quota meant for SC (R&O). The petitioner was successful and was issued an appointment letter dated April 28, 2011. However, he was not allowed to join but no reason was supplied to him for denial of posting. He made a representation which remained undecided compelling him to approach this Court in CWP No.3968 of 2012 which was disposed of on July 27, 2012 after receiving reply from the State. The Department informed the Court that the petitioner had obtained his degree of Masters in Arts in the subject of English from Vinayaka Missions University, Salem, Tamil

Nadu in the year 2009. The Court was apprised that steps have been taken to find out whether the degree relied upon was genuine and whether the University which conferred the degree is recognized by the UGC, New Delhi. The Court was assured that in case the degree was found genuine the petitioner would be permitted to join the post of Lecturer (English). On this assurance, the petition was disposed of with a direction to complete the exercise as regards verification of the degree submitted by the petitioner as expeditiously as possible.

3. However, no final decision was taken despite passage of time. The Department did not do well to keep the matter on hold till 2014 when the petitioner filed COCP No.3206 of 2014 during the pendency of which a status report was filed by the Department before the court. The degree relied on was found genuine but his candidature/appointment was cancelled for the reason that he was offered two opportunities to join after the verification process found the degree genuine but he failed to report for joining. He was informed that he could accept the offer within the joining time. The communication was sent through registered post. Moreover, information was supplied through special messenger sent to his residential address recorded in the application form. However, the residents at the address refused to receive the letter with saying that the petitioner can only himself receive the letter, in short they were not cooperative. That is how the offer was cancelled. When this picture was presented to the Court the contempt rule was discharged vide order dated April 28, 2015 and the petitioner was relegated to avail his remedy against the order dated April 10, 2015 cancelling his candidature.

4. I asked the learned counsel for the petitioner to explain whether he was informed by post or otherwise that his degree was found genuine and he could come forward to accept the offer and join within the time stipulated and to identify as to who was the person at the address of the petitioner given in the application form who refused to accept the letter and informed the postman that it was the petitioner alone who could receive the letter and no one else could receive the letter on his behalf. Learned counsel for the petitioner candidly stated at the Bar that it was the petitioner's estranged brother who refused to accept the letter containing the offer of appointment and that is how the petitioner missed the bus.

5. As a matter of fact the offer of appointment was made vide letter dated September 27, 2012 while CWP No.3968 of 2012 was disposed of on July 27, 2012. The petitioner was supposed to join within seven days but for the above reasons was stumped. The Department did not leave the matter to rest with the letter dated September 27, 2012 but did a repeat performance vide another letter dated October 12, 2012 granting a fresh period of 10 days to join the post of Lecturer (English) at the Government Senior Secondary School Dharamkot, Randhawa, Gurdaspur. This letter was again sent to the residential address of the petitioner given by him in his papers filed in the selection process but he failed to join as one without notice.

6. If the petitioner was dead serious about taking up employment he should have pursued his case with due diligence which he did not nor has demonstrated in the petition. If he was cross purposes with his brother and feared that official correspondence would not reach him at the residential

address supplied he could have informed the recruiting agency/appointing authority of his alternative address or the address where correspondence should be addressed. It was his duty to inform the respondents of his whereabouts. He took no steps in this direction and at least in the year 2013 remained completely slumbering on his rights even though we take it that he must have been awaiting the results of the order dated July 27, 2012 in case they were fruitful. There is also no correspondence on record exchanged after the passing of the order in CWP No.3968 of 2012 on July 27, 2012 on the filing of the contempt petition sometime in the year 2014 between the petitioner and the respondents. The petitioner did not act as a reasonable person might be expected to pursue his rights and left matters to resolve themselves and time pass by in a matter involving direct recruitment where time is crucial and the appointed dates sacrosanct.

7. In the impugned order dated April 10, 2015 cancelling the appointment of the petitioner it has been recorded in the last paragraph by the Director Public Instructions (SE), Punjab that when the post was advertised on September 23, 2009 it was a contractual post on a consolidated salary of Rs.6400/- per month. The recruits under the advertisement who were selected and appointed on contractual posts on a consolidated salary have, as luck would have it, been regularized in service w.e.f. April 06, 2014 and this is one of the reasons ascribed for the petitioner's conduct in failing to pursue his case. His half-hearted approach must have been materially altered when the post became regular by effluxion of time and a policy decision of the Government coming to the rescue of the contractual employees who became regular public servants.

The action of the department then cannot be criticized in cancelling the appointment for the reason that the offer of appointment made twice at the address given by the petitioner himself failed to reach him. If that was the only correspondence address left behind by the petitioner in the selection process then he has only himself to blame and he cannot make an actionable lis out of this. Many aspirants to public employment may not respond or would not chase contractual posts with no assured future in Government. He appears to have woken up seriously when the damage had been done to his rights destroying them by his own act and conduct.

8. I would, therefore, not like to interfere in the matter or issue a mandamus to the State to yet again offer appointment to the petitioner for the fourth time. One on a wrong premise of a suspect degree in MA whilst the other two after the bona fides of the degree was established as genuine, the University recognized. Once the address was correct in the record of the recruiting authority for correspondence in a recruitment process then there will be deemed service on the petitioner. Any interference at this stage would amount to exercise of excessive discretion. It is often said that a sympathetic consideration on the ground of equity would be a case of misplaced sympathy. The judiciary does not believe in misplaced sympathy. It is also said that “The law is merciless”

9. On the above reasoning, the petition must suffer dismissal with howsoever heavy a heart. It is ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

12.02.2016
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