

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

CWP No.10028 of 1996 (O&M)

Date of Decision: 05.12.2017

Pritpal Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rajive Atma Ram, Senior Advocate
with Mr. Ranjit Singh, Advocate
for the petitioner.

Ms. Anu Chatrath, Addl. A.G., Punjab
for respondents No.1 and 2.

Mr. Gurminder Singh, Sr. Advocate
with Mr. R.P.S. Bara, Advocate
for respondent No.7.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 27.08.1999 (Annexure P-11/B) and also order dated 30.08.1999, whereby, the representation of the petitioner dated 03.08.1999 (Annexure P-11/A) has been rejected, Order dated 18.03.1996 (Annexure P-6) and report dated 26.10.1995 (Annexure P-7). A further prayer has also been made for issuance of a direction to the respondents to appoint the petitioner to the P.C.S. (Executive Branch) in the Backward Class Category with effect from the date the person lower in the order of merit has been appointed along with all consequential benefits.

Briefly, the facts of the case, as made out in the present petition, are that the Punjab Public Service Commission (respondent No.4)

issued an advertisement dated 19.06.1993, which was published in the daily newspaper 'The Tribune'. Applications were invited for 64 posts of P.C.S. (Executive Branch) and Allied Services, out of which, 4 posts were reserved for the members of Backward Class category. Petitioner applied in the category of backward class finding himself to be eligible. He was issued roll number and thereafter, he appeared in the preliminary examination. On qualifying the same, he appeared in the main examination which was held in the month of February 1994. Being successful in the written examination, the petitioner was called for interview on 21.07.1994. Only one post was reserved for Backward class category in the P.C.S. (Executive Branch) and three posts were reserved in the Allied Services. The name of the petitioner was figured at serial No.1 of the merit list in the category of Backward class. After his appointment, a complaint was made by one Sh. Sarvjeet Singh to the Deputy Commissioner, Mansa in the month of December, 1994 alleging that the petitioner did not belong to Backward class category and the caste certificate appended by him along with his application form was forged. Said complaint was marked for enquiry to the Sub Divisional Magistrate, Budhlada, District Mansa. The petitioner was called upon to associate with the enquiry. He produced all the relevant documents available with him including his annual family income from all sources, which was less than Rs.10,000/- per annum. Subsequently, the petitioner came to know that it was found during enquiry that he did not belong to the *Khatri* community. He made a representation to the Deputy Commissioner, Mansa stating therein that the report was wrong as no proper enquiry was conducted. He requested for conducting fair enquiry by some independent agency after providing him an opportunity of hearing. The petitioner came

to know that after conducting the enquiry, the report was submitted to the Department of Personnel and Administrative Reforms mentioning therein that the petitioner did not belong to *Khati* caste and his certificate appended with application form was wrongly issued. Petitioner was not considered for appointment and no appointment letter was issued to him. He made a representation. The Department of Personnel and Administrative Reforms wrote a letter to PPSC (respondent No.4) for cancellation of candidature of the petitioner to the post of P.C.S. (Executive Branch). Subsequently, Shri Gurmit Singh (respondent No.7), who was lower in merit than the petitioner, was appointed to the post of P.C.S. (Executive Branch) vide order dated 18.03.1996. Thereafter, again the petitioner made a representation stating therein that the candidate lower in merit has been appointed, whereas, he is entitled to be appointed on the basis of his merit. A legal notice was also served upon the respondents by him but no action was taken thereupon.

The petitioner is aggrieved by the action of the respondents in rejecting his claim and also by appointing respondent No.7 in his place being lower in merit.

Learned senior counsel has raised various arguments in support of his contention that it has wrongly been mentioned in the report dated 26.10.1995 that the petitioner was heard by respondent No.5 and he was given ample opportunity to produce evidence in support of his claim that he belongs to *Khati* caste, whereas, he was never given any opportunity before passing of impugned order. Neither the copy of complaint moved against the petitioner was supplied to him nor he was asked to give any explanation. Learned counsel also submits that the action of the respondents is violative

to the principles of natural justice as first enquiry was got conducted by Sub Divisional Magistrate, Budhlada, District Mansa and during said enquiry, the petitioner was called upon only once to prove the factum of his family income of Rs.10,000/- per annum or less. It was proved on record and a finding was also recorded by Sub Divisional Magistrate, Budhlada that the income of the petitioner was less than the prescribed limit of Rs.10,000/- per annum. Thereafter, the petitioner was never called by the Enquiry Officer. Learned counsel also submits that the petitioner was rightly selected for appointment to the post of P.C.S (Executive Branch) in the category of Backward class being at serial No.1 of the merit list. Learned counsel also submits that the person, who is lower in merit, has been appointed and no reason, whatsoever, has been mentioned by the respondents in not appointing the petitioner. The petitioner was never supplied the copy of complaint at any point of time and he was not aware about the contents of the complaint. A wrong finding has been given that the petitioner does not belong to *khati* caste. Learned counsel also submits that the name of the petitioner was recommended by the respondent-Commission but it was not accepted by the respondent-State and the candidate lower in merit has been appointed, whereas, he was not even eligible for claiming benefit of backward class category as his income from all sources was more than Rs.10,000/- per annum and as such, his appointment is liable to be set aside on this ground. Learned senior counsel also submits that the action of the respondents is not only discriminatory but violative of Articles 14 and 16 of the Constitution of India. It is also the argument of learned counsel for the petitioner that a wrong finding has been given by relying upon the false statement of *Lambardar* that too on the basis

of pedigree table, which was wrongly prepared by *Halqa Patwari*. Subsequently, both the persons admitted their mistake before the Investigating Officer during later enquiry. Only on the basis of revenue record where caste so mentioned has been relied upon, whereas, the caste is never mentioned in the revenue record. Subsequently, the statement of *Lambardar* was also found to be false. In the revenue record, the caste of the petitioner was mentioned as 'Arora'. The father of the petitioner was married to 'Arora' girl. The maternal uncle of the petitioner has mentioned his caste as 'Arora'.

Learned senior counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in case *A.K. Doshi vs Union of India* 2001(2) SCT 402, *Chairman and Managing Director FCI and others vs Jagdish Balaram Bahira and others* 2017(3) SCT 735, *Kumari Madhuri Patil and another vs Additional Commissioner, Tribal Development and others* 1995(1) SCT 261, *Kumari K.S. Jayasree and another vs The State of Kerala and another* 1977(1) SCR 194. *Managing Director, ECIL, Hyderabad vs B. Karunakar* 1994(1) SCT 319, *The Indian Institute of Information Technology, Deoghat Jhalwa Allahabad and another etc. vs Dr. Anurika Vaish and others etc.* 2017(2) SCT 537, *Km. Neelima Misra vs Dr. Harinder Kaur Paintal and others* 1990 AIR(SC) 1402 and judgments of this Court in cases *Bijender Singh etc. vs State of Haryana etc.* 1994(4) SCT 382, *Roshan Lal vs State of Haryana* 1995(4) SCT 461, *Amarinder Singh vs Sant Longowal Institute of Engineering and Technology* 2000(1) SCT 815, *Punjab State Co-op. Supply & Marketing Federation Limited vs Presiding Officer, Labour Court and another* 2005 (4) SCT 390, *Balwinderjit Kaur vs Financial Comm. (Appeals), Punjab*

1986(2) PLR 184, Anil Kumar Uppal vs Punjab State Electricity Board and others 2009(2) SCT 189, Naresh Kumar vs State of Haryana and others 2003(4) SCT 573, State of Punjab and another vs Gurnam Singh 1991(1) SCT 445, Dr. Vijay Khariwal vs State of Punjab and another 2013(4) SCT 302, Union of India and another vs Maya Ram and others 2016(1) SCT 275, Rajpal Singh vs State of Punjab and others 2017(1) SCT 492, Pramod Kumar Sharma vs State of Haryana and others 2017(1) SCT 79 and Mangat Ram, Sarpanch vs State of Haryana 2001(3) RCR (Civil) 378 in support of his contentions.

Learned counsel for the respondent-State, while raising preliminary objections, submits that the petitioner has not approached this Court with clean hands as he submitted a false Backward Class Certificate for getting the benefit of that caste, whereas, he belongs to 'Arora' caste. By fabricating the caste certificate, he has shown himself belonging to 'Khatri' caste. A departmental enquiry was conducted by the Commissioner, Ferozepur Division and it was found that the petitioner does not belong to Backward class. Not only proper opportunity of hearing was given to the petitioner but he was asked to lead his evidence to support his case. A detailed enquiry was conducted and thereafter, the petitioner was heard at length. Even the relevant record was obtained from the Office of Deputy Commissioner, Mansa. In the old record, the ancestors of the petitioner were shown belonging to 'Arora' community. In a detailed enquiry, all documents were taken into consideration including consolidation record of District Bathinda for the year 1957-58, *Sajra Nasab Malkan* for the year 1957-58, 1974-75 and 1979-80 of village Talwandi (Hadbast No.228) Tehsil Mansa, District Bathinda. It was proved in the enquiry that the

petitioner did not belong to 'Khatri' caste and he procured a false certificate by showing himself to be a member of 'Khatri' caste, whereas, his caste was 'Arora'.

Learned counsel for respondent No.7 has raised a preliminary objection that the petitioner was born in the year 1958 and had already crossed the age of superannuation and hence, the present petition has become infructuous. The certificate annexed by the petitioner was verified by the Welfare Department after verifying the revenue record and after considering the *Sajra Nasab Malkan*, it was found that the petitioner belongs to 'Khatri' caste. It was proved in the detailed enquiry that the petitioner belongs to 'Arora Khatri' (Ghaba) caste and he produced a false certificate. The report of the Welfare Department was based on copy of *Sajra Nasab Malkan* which was found to be replaced by the petitioner fraudulently. Petitioner in connivance of some official deleted his caste and in place thereof, it was mentioned as 'Khatri' and the year of *Sajra Nasab Malkan* was changed from 1979-80 to 1961-62. It was also found that *Patwari* himself had admitted in his statement that the wrong record was prepared. Respondent no.7 was appointed being the next backward class candidate. Learned senior counsel also submits that the petitioner has no *locus standi* to challenge the appointment of respondent No.7 as he himself was declared ineligible for the said post and a person, who is declared ineligible is not entitled to hold the post and even cannot challenge the appointment of other person on the said post. Learned senior counsel further submits that the petitioner never challenged the order dated 30.08.1999. Even the order, vide which the petitioner was declared ineligible, was not challenged in the amended writ petition. The speaking order dated

30.08.1999 has attained finality and the present petition is liable to be dismissed only on this ground.

Learned counsel for respondent No.7 has relied upon the judgments in case *Amrinder Singh vs Sant Longowal Institute of Engineering and Technology 2000(1) SCT 815*, *Retd. Armed Forces Medical Association and others vs UOI and others 2006(11) SCC 731*, *Punjab State Co-op. Supply Marketing Federation Limited vs Presiding Officer Labour Court and another 2005(4) SCT 390*, *Ganpatbhai Mahijibhai Solanki vs State of Gujrat and others 2008(12) SCC 353*, *Kartar Singh vs State of Haryana 2004(3) SCT 439*, *Chairman and Managing Director FCI and others vs Jagdish Balaram Bahira and others 2017(7) JT 125*, *N.T. Devin Katti and others vs Karnataka Public Service Commission and others 1990(3) SCC 157*, *Vikas Partap Singh and others vs State of Chhattisgarh and others (2013)14 SCC 494*, *Ranbir Singh vs Executive Engineer (2011)15 SCC 453* and *Hitendra Singh vs Panjabrao Deshmukh Krishi Vidyapeeth by Registrar and others (2014)8 SCC 369* in support of his contentions.

Heard the arguments of learned counsel for the parties and have also perused all documents available on record.

Admittedly, in pursuance of advertisement issued by the Punjab Public Service Commission, the petitioner and respondent No.7 applied to the post of P.C.S (Executive Branch) in the backward class category. Said post was to be filled up on the basis of written examination (preliminary and main) and thereafter, the interview was to be conducted. Petitioner was selected as he was found at serial No.1 of the merit list in the category of Backward class candidates, whereas, respondent No.7 was placed at serial

No.2 of the merit list. On the basis of a complaint made to the effect that the petitioner procured his selection/appointment on the basis of Backward class certificate, which was forged document, the enquiry was conducted and his appointment was withheld. The recommendation of the Public Service Commission in favour of the petitioner was cancelled and respondent No.7 was offered appointment being the next in merit in Backward Class Category. All documents including the Backward Class certificates of all candidates were verified. The taxable income of respondent No.7 was Rs.40,127/-. The appointment of respondent No.7 has been challenged on the ground that the petitioner was not granted any opportunity during enquiry and was not given the opportunity to prove his case. It was an *ex-parte* enquiry and the report of Sub Divisional Magistrate was sent by the Deputy Commissioner Mansa to the Department of Personnel and the appointment of the petitioner was withheld. The enquiry report of Deputy Commissioner Mansa was sent by the Government to the Department of Welfare for advice but it disagreed with the report of Deputy Commissioner, Mansa as the certificate of the petitioner was found to be genuine. The certificate presented by the petitioner was verified by the Welfare Department and by relying upon *Sajra Nasab Malkan*, a report dated 28.07.1995 was submitted by the Welfare Department by holding that the *Sajra Nasab* of the year 1961-62 was actually of the year 1979-80. Because of two contrary reports, the third enquiry was marked to Commissioner, Ferozepur Division, Ferozepur to verify the genuineness of the certificate of the petitioner. In the third enquiry, the report was submitted on 26.10.1995. It was found in the enquiry that the petitioner belong to 'Arora Khatri' (Ghaba) caste and the certificate produced is false.

It was also found that the report of Welfare Department was based on copy of *Sajra Nasab Malkan* as the same was replaced by the petitioner from 1979-80 to 1961-62 fraudulently. A finding was also given in the enquiry report that the petitioner in connivance with some official, deleted his caste and mentioned it as '*Khati*'. This fact was also admitted by the *patwari* in his statement. Thereafter, on the basis of said report, the respondent-State, vide letter dated 24.03.1995, requested the respondent-Commission to cancel the candidature of the petitioner and accordingly, the recommendation of the petitioner was withdrawn. Thereafter, respondent No.7 was recommended for appointment in Backward Class category being next in merit. It is also relevant to mention here that the petitioner filed the present petition in July, 1996 challenging the appointment of respondent No.7 on the ground that respondent No.7 is lower in merit than him but still he had been appointed and petitioner has been ignored. During pendency of the writ petition, a regular enquiry was conducted by the Vigilance Department with regard to bogus certificate produced by the petitioner. In the enquiry, it was found that the certificate of the petitioner was forged and the same was not genuine. Said report was also produced before this Court on 05.02.1998. Thereafter, vide order dated 27.07.1999, the respondent-State was directed to take a final decision on petitioner's case within a period of four weeks. It was also mentioned that in case, his claim was to be rejected, it should be by way of passing speaking order. Ultimately, the final decision was taken on 28/30.09.1999 by holding that the petitioner was ineligible being not belonging to Backward Class category. It was communicated to the petitioner and a copy of the order was also placed on record on 15.11.1999. Thereafter, the petitioner sought time to amend the

petition in view of fresh order passed by the respondent-State. Amended writ petition was filed by the petitioner on 12.07.2000 stating therein that the fresh order had been passed by the Government during pendency of the writ petition and he be allowed to challenge the same by amending the writ petition. He was allowed to do so. It is also relevant to mention here that order dated 27/30.08.1999 was not challenged even in the amended petition. A show cause notice dated 10.04.2000 was also issued to respondent No.7 in respect of his candidature. The reply to this Show Cause Notice was filed by him. Thereafter, it was dropped by the Government by passing a separate order on 29.03.2001 which was never challenged by the petitioner and Show Cause Notice issued to respondent No.7 was dropped. The petitioner himself was not found to be eligible and he had no right to challenge the order of appointment of other candidates as the selection/appointment could be challenged only by the aggrieved person. Only the appointment of respondent No.7 has been challenged. A detailed speaking order was passed by the respondent-State as per directions issued by this Court but the said speaking order dated 30.09.1999 was also not challenged.

It is a well settled law that the fraud vitiates everything and the person who has not approached the Court with clean hands cannot claim any relief.

The petitioner applied in the Backward Class category and that certificate was found to be forged. Not only he has mislead the Commission but the respondent-State as well in the enquiry proceedings. The person, who has obtained the appointment in a fraudulent manner cannot claim relief under Article 226 of the Constitution of India as has been held in judgment of Division Bench of this Court in case **Kartar Singh vs State of**

It is also the well settled proposition of law that when it is found that there is a fraud played on the part of any person then no equity or sympathy can come to his rescue as has been held in judgment titled as **Chairman and Managing Director FCI vs Jagdish Balram Bahira 2017 (7) JT 125.**

With respect to the argument raised by learned senior counsel for the petitioner that respondent No.7 was not eligible for claiming benefit of Backward Class category as his income was more than Rs.10,000/- and for the claim benefit of Backward Classes, the income must be not more than Rs.10,000/- per annum and the candidate must be of a caste mentioned in the list of Backward Classes. Respondent no.7 has given his taxable income as Rs.50,000/- in his application form. His gross income was more than Rs.50,000/-. As per advertisement, the candidate applying in said category should have a certificate of Backward Class and his annual family income should not be more than Rs.10,000/-. However, it was also provided that in case, the candidate is an income tax payee, then his annual income should not be more than Rs.50,000/-. This was in consonance with the instructions issued by the State Government amending the earlier instructions and increasing the limit of income from Rs.3600/- to Rs.10,000/- and in the same instructions, it was provided that for candidates who were already in service and as per their income, they were required to pay income tax and for applying for a superior post, their income limit was to be less than Rs.50,000/-.

Admittedly, the annual family income of respondent No.7 was Rs.40,127/- as he was working as District Manager PSWC Ludhiana at that

time and was an income tax payee. The caste status of respondent No.7 has not been challenged in the petition. Respondent no.7 was placed at serial No.2 in the merit list and he was considered being next to the petitioner in the merit list.

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

(DAYA CHAUDHARY)
JUDGE

05.12.2017
gurpreet

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No