

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP-10437-2014 (O&M)
Date of Decision: March 09, 2017

Kanwal Preet Singh Sidhu and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

2. CWP-12418-2014 (O&M)
Brij Mohan Sethi and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

3. CWP-12510-2014 (O&M)

Abhijeet Kumar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.D.V.Sharma, Sr.Advocate with
Ms.Esnjyot Walia, Advocate
for the petitioners.

Mr.Rajesh Bharwaj, Addl.AG, Punjab.

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SURYA KANT, J.

This order shall dispose of the above-captioned writ petitions as

the common question of law raised in the cases is whether the employees of Government owned and controlled Boards/Corporations are entitled to be treated as the employees serving in connection with the affairs of the State of Punjab and/or serving under the Government? And if so, whether such employees are eligible for appointment to Punjab Civil Service (Executive Branch) through 'Register-C' of the Punjab Civil Services (Executive Branch) (Class-I) Rules, 1976?

[2] The facts are being extracted from CWP No.10437 of 2014.

[3] The three petitioners are employees of Punjab State Power Corporation Limited (for brevity, 'PSPCL') while petitioner Nos.1 and 2 are working as Assistant Engineers, petitioner No.3 is working as Private Secretary to the Director (Finance).

[4] The petitioners have averred that the Punjab State Electricity Board was constituted under the Electricity (Supply) Act, 1948 (for brevity, 'the 1948 Act'). The said Act has since been repealed by the Electricity Act, 2003. In conformity with the new legislation, the Punjab State Electricity Board was dissolved and has been bifurcated into two Corporations namely, PSPCL and the Punjab State Transmission Corporation Limited. Both the Corporations have been incorporated under the provisions of Companies Act, 1956. PSPCL is a Government Company, fully owned and controlled by the State of Punjab.

[5] The petitioners have further averred that even before the establishment of Punjab State Electricity Board, the functions of supply of electricity for the domestic or agricultural sectors used to be administered

by the Power Department of State Government through its Electricity Wing. Those departmental functions were then transferred to the Board. PSPCL is one of the successor of the Board, hence the genesis of the posts held by the petitioners lies in the erstwhile Department of Power of the State of Punjab.

[6] The Punjab Civil Services (Executive Branch) (for brevity, 'the PCS(EB)') is the premier State Civil Service. Appointment to PCS(EB) is made under the Rules known as Punjab Civil Services (Executive Branch) (Class I) Rules, 1976 (for brevity, 'the 1976 Rules'). These have been formulated in exercise of the powers under proviso to Article 309 of the Constitution.

[7] There are different sources of recruitment to PCS(EB) and each source is referable to a Register described under the 1976 Rules, in which names of the candidates selected from such sources are entered as the successful candidates. The successful candidates from different Registers are then appointed as per their prescribed quota and the rotation.

[8] Rule 8 of the 1976 Rules provides that 'Register A-I' shall comprise of the persons who have been selected for appointment to PCS(EB) from amongst District Revenue Officers, Tehsildars and Naib Tehsildars. 'Register A-II' contains the names of members of Group 'A' and Group 'B' services serving in connection with the affairs of State of Punjab and holding ministerial appointments not below the level of Senior Assistants. Similarly, 'Register A-III' is for enlisting the names of persons selected from amongst Assistant Excise and Taxation Commissioners, Excise and Taxation Officers, District Development and Panchayat Officers

and the Block Development and Panchayat Officers serving in connection with the affairs of the State of Punjab.

[9] Likewise, there shall be 'Register -C' in which names of the persons who have been accepted as candidates from amongst officers/officials of Group 'A' and Group 'B' serving in connection with the affairs of State of Punjab and holding post not below the level of Senior Assistant and "who are not covered by any of the categories of officers/officials hereinbefore mentioned in this Rule", are entered. 'Register B' consists of the candidates who are selected by way of direct recruitment for appointment to PCS(EB).

[10] The 1976 Rules contemplate different mode of selection for each Register including the eligibility conditions for the feeder services.

[11] 'Register -C' is thus an omnibus source of recruitment through which candidates who are not covered within any other category of officers/officials mentioned in Register A1 to Register B, are considered for appointment to the State Civil Service.

[12] Rule 15 of the 1976 Rules provides the manner in which Register 'C' of accepted candidates shall be prepared and it reads as follows:

"15. (Preparation of Register C of accepted candidates):-

(1) The Commission shall invite the applications from amongst the members of Group 'A' and Group 'B' services, serving in connection with the affairs of the State of Punjab, who are not covered under any of the categories of officers or officials mentioned in rules 9, 10 and 11, not below the level of Senior Assistants, which shall be submitted to the Commission through proper channel along with their service

record.

(2) The applications received alongwith the service records of the candidates shall be processed by the Commission for adjudging the suitability of such candidates, and after conducting a screening test, the Commission shall prepare a list of eligible persons, three times of the number of vacancies.

(3) For final selection of the candidates from the list prepared under sub-rule (2), the Commission shall determine the suitability of candidates on the basis of Annual Confidential Reports, Seniority, Experience and Performance in the Interview by associating two representatives of the State Government, one serving as Secretary, Personnel and General Administration and the other Senior IAS officer nominated by the Chief Secretary to Government of Punjab.

Provided that the members of the Commission and representatives of the State Government involved in the selection, shall certify in respect of the each candidates that they have no relation with him.

(4) The name of a person shall not included in the final list unless he-

“(a) is a confirmed hand and has completed eight years continuous service under the Government;

(b) was under the age of fifty four years on the first day of November immediately preceding the date of submission of name by the concerned authorities; and

(c) is a Graduate of recognised university.”

[Emphasis applied]

[13] It may be seen from sub-Rule(4) of Rule 15 that a person cannot be included in the final list of `Register -C' unless he is a confirmed

hand and has completed eight years continuous service under the Government and is under the age of fifty four years and is also a graduate of recognised University.

[14] Since the employees working in Boards and Corporations which are under the control of State Government have not been found eligible for appointment to PCS(EB) on the plea that they are not serving under the Government as required under Clause (a) in Sub-Rule(4) of Rule 15, the aggrieved petitioners have laid challenge to the legality of the above-stated condition.

[15] It is contended on behalf of the petitioners that (i) the expression under the Government is of wide amplitude and it includes all such employees who are working in connection with the affairs of the State of Punjab; (ii) Clause (a) of Sub-Rule (4) of Rule 15 is in conflict with Sub-Rule (1) of Rule 15 as every member of Group 'A' or Group 'B' services who is serving in connection with the affairs of the State of Punjab, is made eligible under sub-Rule(1) for entry into Register - 'C' but such eligibility has been run down by Clause (a) of sub-Rule 4 by imposing a discriminatory and hostile condition of service under the Government; and (iii) Rule 1.8 of the Punjab Civil Services Rules, Vol I, Part I defines the expression "State Government employees" to mean "all persons whose conditions of service may be regulated by Rules made by the Governor of Punjab under proviso to Article 309 of the Constitution." While the petitioners are being held ineligible on the pretext that their service conditions are not regulated by the Rules framed under proviso to Article 309 of the Constitution but the

Court' have been treated eligible even though their services are regulated by the Rules framed under Articles 187 and 229 of the Constitution, respectively. The Rules are, thus, being construed and applied in a tailor-made manner on the whims and fancies of the authorities.

[16] It is further contended on behalf of the petitioners that PSPCL is an 'Authority' which falls within the ambit of 'State' under Article 12 of the Constitution and therefore also they are entitled to be treated at par with employees of 'Punjab Vidhan Sabha' or the 'Punjab and Haryana High Court'.

[17] The petitioners also allege that the action of the respondents in rendering them ineligible under 'Register -C' is derogatory to the Division Bench judgment of this Court rendered in CWP No.19589 of 2012 (Sukhwinder Singh vs State of Punjab and another) decided on 26.03.2013.

[18] State of Punjab as well as the Punjab Public Service Commission have filed their respective written statements. According to the State of Punjab, Rules to regulate the recruitment and conditions of service of a person appointed to the Public Service/Post in connection with the affairs of the State of Punjab are framed under Article 309 of the Constitution. The services which are not covered under such Rules cannot be defined as 'Public' or 'Government Services'.

[19] The State Government has further clarified in Preliminary Submission No.7 as to who are entitled to be treated as 'Government employees'. It relies upon Rule 1.2 of Punjab Civil Services Rules, Vol.I,

Part-I, which reads as follows:-

“(1) Except as otherwise provided in rule 1.4 infra or in any other rule or rules these rules shall apply to all Government employees belonging to the categories mentioned below, who are under the administrative control of Punjab Government and whose pay is debitabale to the consolidated Fund of the State of Punjab:

- (1) Member of State Services, Class I and II;
- (2) Member of State Services, Class III;
- (3) Member of Provincial Services, Class IV,
- (4) Holders of Special Posts; and
- (5) Any other Government employee or class of Government employees to whom the competent authority may, by general or special order, make them applicable.

Note 1.- Unless stated to the contrary in any rule or rules or the contrary is apparent from the context, the term “Government employee” includes also a temporary or an officiating Government employee.

Note 2.- The Speaker of the Legislative Assembly has agreed under Article 187(3) of the Constitution that until a law is made by the Legislature of the State under Article 187(3) of the Constitution or rules are framed by the Governor in consultation with the Speaker of the Legislative Assembly under Clause (3) of Article 187 of Constitution of India, these rules and amendments thereto, if any (after prior consent of the Speaker), shall apply to the Secretariat staff of the Punjab Legislative Assembly.

Note 3. The Chief Justice of the Punjab High Court has agreed to the application of these rules as amended from time to time in case of officers and employees of the Punjab

High Court.

Note 4. The Chairman, Punjab Public Service Commission has agreed to the application of these rules as amended from time to time, in the case of officers and employees of the Punjab Public Service Commission.”

[emphasis applied]

[20] It has been reiterated in paras 21 and 22 of the written statement that in view of the consent accorded by the Speaker of the Legislative Assembly and Chief Justice of the High Court during the course of consultation, Punjab Civil Services Rules are applicable to the employees of both the Institutions. Therefore, the Vidhan Sabha or High Court employees have been rightly treated eligible under the 1976 Rules as amended vide Notification dated 28.07.2011 (Annexure P-1).

[21] We have heard learned counsel for the parties at a considerable length and gone through the record in our quest to find out answers to the questions formulated in para 1 of this order.

[22] Before advertizing further, it would be useful to reproduce Rule 1.8 of Punjab Civil Services Rules Vol.-I, Part-I, which reads as follows:-

“1.8 The power of interpreting, changing and relaxing these rules is vested in the Department of Finance.

Note 1.- Communications regarding the interpretation and alteration of these rules should be addressed to the Department of Finance through the Administrative Department concerned.

Note 2.- Where the Department of Finance is satisfied that the operation of any of these rules regulating the conditions of service of State Government employees or

any class of such Government employees, causes undue hardship in any particular case, it may by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

The expression 'State Government employees' means all persons whose conditions of service may be regulated by rules made by the Governor of Punjab under the proviso to Article 309 of the Constitution.” [Emphasis by us]

[23] From the scheme of the Rules including Rule 1.8 reproduced above and the validity of which is not under challenge, it is seen that the expression 'State Government employees' is referable to those persons only whose conditions of service are regulated by the Rules framed by Governor of Punjab under proviso to Article 309 of the Constitution. Under Article 309, Legislature is empowered to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. In the absence of such legislative enactment, the Governor of the State is competent to make the Rules regulating the recruitment and conditions of service of the above-stated category of persons. It is, thus, essential that the Rules formulated under proviso to Article 309 must be in relation to the conditions of service of the persons who have been appointed to public services and posts “in connection with the affairs of the State”. 'Public Services' and 'Posts' or 'affairs of the State' are well defined connotations which refer to such civil or public posts, the holder whereof also gets protection under Article 311 of the Constitution.

State of Punjab' contained in sub-Rule (1) of Rule 15 necessarily means to those persons only who are serving under the State Government. A person can be said to be serving under the Government and in connection with the affairs of a State when his conditions of service are governed under the Rules framed under Proviso to Article 309 of the Constitution. In **The State of Assam and others vs Kanak Chandra Dutta**, AIR 1967 SC 884, the Hon'ble Supreme Court held that “.....A person holding a post under the State was a person serving or employed in a State and under its administrative control. There was a relationship of Master and servant between the State and the person said to be holding a post under it.....” Since conditions of service of the petitioners in PSPCL are admittedly not regulated by any such Rules and there is no relationship of master and servant between such employees and the State of Punjab, they cannot claim themselves to be the persons serving under the State of Punjab.

[25] Similarly, the expression 'serving in connection with the affairs of the State of Punjab' necessarily means assignment of the duties in furtherance of the constitutional obligations and responsibilities of a State and which cannot be entrusted to private entities. The sale and supply of electricity power is no longer an exclusive domain of the State though the State may at any time enter into commercial or business ventures and compete with private entities in larger public interest.

[26] The question whether the employees of Statutory Boards/Corporations hold civil post under the Union or State can be effectively answered keeping in view the following parameters laid down in

one or the other binding precedent:-

(a) A Corporation/Board has its own separate and independent existence and is a different entity from the State, with its own property and fund;

[b] It makes little difference if the State holds majority shares of the Corporation and controls its administration by Policy directive or otherwise;

(c) It also makes hardly any difference if the Corporation adopts or copies the State Service Rules to govern conditions of service of its employees;

(d) Although the ownership, control and management of the Corporation/Board may, in fact, be vested in the State, yet in the eyes of law the Corporation/Board is its own master and is a separate entity and its employees, therefore, do not hold a civil post under the State.

(e) The only exception can be where the power to create or abolish a post in the Board/Corporation entirely vests in the State and the State pays the holder of such post out of its own funds, that the incumbent of the said post can claim to be the holder of a civil post under the State.

Applying these principles to the facts and circumstances of the case in hand, none of the petitioners can be said to be serving under the State.

[27] The petitioners cannot claim parity with the employees of Punjab Vidhan Sabha or High Court as both the Institutions are creation of the Constitution. So long as their administrative heads have agreed to the applicability of Punjab Civil Services Rules for the purpose of regulating the conditions of service of their employees, the State is right in urging that the employees of these two organs would fall within the expression of 'State

`Register -C'.

[28] The petitioners cannot draw any mileage out of the fact that once upon a time the work of sale and supply of electricity used to be performed by a Government Department till it was transferred to the Board, followed by creation of two Corporations. The petitioners in the instant case have joined the Board/PSPCL and not the Government Department which used to exist in the year 1950, namely, before the Board came to be established. They have been appointed by an Authority which may be a `State' within the meaning of Article 12 for the purpose of enforcement of fundamental rights. Such status does not bring them within the purview of Article 309 or 311 as they do not hold a public or civil post.

[29] For the reasons aforesaid, we do not find any merit in these writ petitions, which are accordingly dismissed.

**(SURYA KANT)
JUDGE**

March 09, 2017

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**(SUDIP AHLUWALIA)
JUDGE**

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |