

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 19516 of 2011
Date of Decision: 08.08.2017

Jatinder Pal Kaur

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Mohit Garg, Advocate,
for the petitioner.

Mr. Amar Vivek, Addl.A.G., Haryana.

Mr. Vaneet Soni, Advocate,
for respondent no.4.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner seeks a writ of certiorari quashing the order Annexure P-2, by which respondent no.4, Meena Kumari, has been given an appointment as an Anganwari Worker at village Dadiana, Block Ambala. The petitioner thereafter seeks a writ of mandamus, directing that she be appointed to the said post on the basis of the selection process held, in which she (the petitioner) had actually been given higher marks in the interview than respondent no.4 and consequently had also obtained a higher total of marks in the final selection process, which position was altered by awarding more marks to respondent Meena Kumari, than the petitioner, after the interview was already over.

It is contended that the petitioner had been awarded 8 marks in the interview, with Meena Kumari having been awarded 7 marks. The petitioner and

Meena Kumari both being daughters-in-law in the village had been given 8 marks each under that criterion, with both of them having also been awarded 45 marks each on account of their educational qualification.

As regards the educational qualification, it has been pointed out that any candidate who had obtained more than 60% marks in the matriculation examination was to be awarded 60 marks and anyone having passed the matriculation examination, whether in the 2nd or the 3rd division, was to be awarded 45 marks. Hence, though respondent no.4 scored 294 marks out of 600 in the matriculation examination, with the petitioner having obtained only 227 marks out of 600, they were both awarded 45 marks for the educational qualification of matriculation.

Thus, the petitioner was awarded 8 marks for being a daughter-in-law of the village, 45 marks for her educational qualification and 8 marks in the interview, thereby totalling 61 marks.

Respondent no.4 having obtained 8 marks for being a daughter-in-law, 45 marks for her educational qualification and 7 marks in the interview, was initially therefore awarded 60 marks in all.

As per the original award sheet produced in Court, 3 other candidates also obtained 60 marks each.

However, subsequently, respondent no.4 was awarded 2 more marks in the interview by changing the numeral '7' to '9', with the total of 60 marks obtained by her also having been changed to 62 marks, by converting the numeral '0' to '2'.

Consequently, respondent no.4 was declared to be selected, with the petitioner having been placed at no.1 in the waiting list.

As already noticed in the order dated 03.08.2017, it was not denied,

and could not have been denied on behalf of the State, that very obviously the marks assigned in the interview to respondent no.4, Meena Kumari, were changed from 7 to 9, thereby resulting in an increase also in her total marks from 60 to 62, which again is by converting the '0' in '60' into a '2'.

Mr. Amar Vivek, learned Additional AG, Haryana, today points to the marks obtained by the petitioner in the matriculation examination, i.e. 227 out of 600, equivalent to 37.8%, and those obtained by respondent no.4, Meena Kumari, i.e. 294 out of 600, equivalent to 49%.

He therefore submits that the Selection Committee having subsequently realised that respondent no.4, Meena Kumari, deserves to be selected in place of the petitioner, on account of the disparity in their marks in the matriculation examination, it therefore awarded the said respondent 2 marks more in the interview, thereby giving her total marks more than the petitioner.

He submits that in the absence of any mala fides alleged against any individual members of the Selection Committee, simply the changing of the marks in the result-sheet cannot be held to be a mala fide exercise, thereby vitiating the selection of respondent no.4, Meena Kumari.

Mr. Soni, learned counsel for respondent no.4, Meena Kumari, reiterates the aforesaid and further points to the fact that it is obvious from the final award sheet, that it is not a case where the petitioner was initially declared to be selected, but was subsequently substituted by respondent no.4. In fact, it was respondent no.4 who was shown to be finally selected, with there being no cutting in the word "Selected". The petitioner had therefore been placed in the waiting list at the first position.

The contention therefore is that the change of marks awarded in the interview was done at a stage prior to the final selection having actually taken

place.

Whereas the rationale of what is contended by the learned Additional AG, and Mr. Soni is not lost on the Court, however, the fact is that after awarding 7 marks in the interview to respondent no.4, Meena Kumari, her marks were subsequently increased to 9 and the total marks therefore changed to 62, which would, in the opinion of this Court, not be an exercise which can be said to be proper, even if there was otherwise no mala fide intent on the part of the Selection Committee.

Even though Mr. Sonis' contention is to the effect that the marks had been changed prior to the final decision of the selection, that would still not be seen to be an exercise that would be otherwise fair, even though it may be without mala fide intent, the petitioner already having been awarded higher marks in the interview, than Respondent no.4.

As regards the contention that respondent no.4 having a higher score in the matriculation examination, she deserves to be selected over and above the petitioner, that contention is rejected on the ground that the Selection Committee/competent authority having already fixed the criterion by which anybody who scored less than 60% marks in the matriculation examination, was to be awarded only a total of 45 marks, therefore, even if the petitioner had scored lesser marks in the matriculation examination than respondent no.4, she cannot be discriminated against on that ground, with that criterion already having been decided prior to the selection process. Hence, to change the marks obtained by respondent no.4 in her interview, because she had higher marks in the matriculation examination, at a time when the entire selection process was actually over, would not be a fair act, even if the marks were changed before the selection process was actually finalized. This would be so because whatever marks were

awarded to the petitioner and respondent no.4 in the interview, was on the basis of their performance in the interview and not on the basis of the marks that they obtained in the matriculation examination.

Consequently, this petition is allowed, the selection of respondent no.4, Meena Kumari, is quashed, and the petitioner is ordered to be appointed in her place as an Anganwari Worker.

August 08, 2017
rajneesh/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No.