

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2683 of 2016 (O&M)
Date of decision: 09.08.2017

Rahul Vijay Singh Chugh

.... Petitioner

Versus

Punjab and Haryana High Court, Chandigarh &
Others

.... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Vipin Kumar, Advocate for the petitioner; and
Mr. Rahul Vijay Singh Chugh, Advocate - petitioner in
person.

Mr. Ashwani Chopra, Senior Advocate with
Mr. Lalit K. Gupta, Advocate for respondents No.1 and 2.

Mr. Dheeraj Chawla, Advocate for respondent No.3.

Mr. Naresh Jain, Advocate for respondent No.4.

Mr. Vikram Anand, Advocate for
Mr. Manuj Nagrath, Advocate for respondent No.5.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. Arjun Shukla, Advocate for respondent No.6.

Mr. Hemant Saini, Advocate for respondent No.7.

Mr. PPS Thethi, Addl. A.G., Punjab for respondent No.8.

S.S. Saron, J.

The petitioner Rahul Vijay Singh Chugh has filed the present petition under Articles 226/227 of the Constitution of India seeking quashing of the selection of respondents No.3 to 7 for the posts of Additional District and Sessions Judges in the State of Punjab as there has been violation of the requisite/mandatory condition of the Scheme of Selection inasmuch as three times the number of candidates were not called for viva-voce for

consideration for selection for the five posts that were filled from the open General Category. A further prayer has been made for directing High Court of Punjab and Haryana, Chandigarh through its Registrar General and the Registrar Recruitment, High Court of Punjab and Haryana, Chandigarh (respondents No.1 and 2) to re-conduct the selection process of the Punjab Superior Judicial Services Examination, held in 2015 from the stage of viva-voce for the posts of Additional District and Sessions Judges in the State of Punjab after short listing requisite number of candidates as per the requisite condition provided in pursuance of notification dated 01.02.2016.

At the outset it was put to all the learned counsel appearing for the parties that one of us (S.S. Saron, J) of this Bench was a member of the Interview Committee though not of the Recruitment Committee and whether they had any objection to the same. On this, all the counsel appearing for the parties as also the petitioner stated that they had no objection and would not raise any objection in this regard.

We have heard learned counsel for the parties at considerable length and have considered the matter.

The petitioner is a practicing Advocate in this Court. He initially started his practice as an Advocate at the District Courts, Mansa where he practiced from 16.11.2000 till May 2004. Thereafter, he started independent practice in this Court and is continuing till date. He has remained in active independent practice from the date he was granted a license to practice.

The Registrar Recruitment, High Court of Punjab and Haryana, Chandigarh (respondent No.2) issued a notification dated

3.3.2015 (Annexure P1) inviting applications for filling up 11 vacancies to the Punjab Superior Judicial Services. The break-up of the vacancies given were that five were for the General Category; three were for the members of the Scheduled Castes ('S.C.' - for short) Category (one for S.C. others Punjab, one for S.C. (Sportsman) and one for S.C. Balmikis/Mazhibi Sikhs), one for the members of the Backward Class Category and two for the Physically Handicapped (differently abled person) category.

The said notification dated 03.03.2015 (Annexure P1) was followed by a corrigendum that was issued on 30.03.2015. It was clarified in terms of the corrigendum that out the five vacancies advertised for open General Category, one vacancy was reserved for General Category (Sportsman).

The petitioner submitted his duly filled form in terms of the notification (Annexure P1) and the amended notification that had been issued. He submitted necessary documents and also placed material on record for his consideration for selection as Additional District and Sessions Judge in the Punjab State Superior Judicial Services. The date-sheet for the examinations for consideration for selection was issued by way of a public notice on 21.09.2015 (Annexure P-4). The petitioner was assigned Roll No.389 and he appeared in the written examinations that were conducted from 30.10.2015 to 01.11.2015.

After the written examinations, the Registrar Recruitment, High Court of Punjab and Haryana, Chandigarh (respondent No.2) on 18.11.2015 (Annexure P-5) issued roll number wise list of candidates who had qualified for appearing in the viva-voce for the posts of Additional District and Sessions

Judges in the State of Punjab on the basis of their merit in the main written examinations held from 30.10.2015 to 01.11.2015. In terms of the said roll number wise list (Annexure P-5) of candidates who had qualified for viva-voce, the roll numbers of twelve candidates from the open General Category and one from the physically handicapped category were mentioned. In this manner, twelve candidates from the open General Category and one candidate from the Physically Handicapped Category were short-listed for appearing in the viva-voce test. A note was put on the said roll number wise list (Annexure P-5) of candidates who had qualified for viva voce, which is to the following effect:-

“No candidate belonging to any other category as per advertisement has qualified for viva-voce.”

A public notice (Annexure P-6) was published by the Registrar Recruitment, High Court of Punjab and Haryana, Chandigarh (respondent No.2) on 19.12.2015 informing all concerned that viva-voce of the qualified candidates for Punjab Superior Judicial Services-2015 was scheduled to be held on 11.01.2016, 12.01.2016 and 13.01.2016 at the High Court of Punjab and Haryana at Chandigarh.

The petitioner was not called for viva-voce and the twelve candidates of the General Category and one from the Physically Handicapped Category who had been short-listed were called for interviews which were conducted on 11.01.2016, 12.01.2016 and 13.01.2016.

After the result of the written examinations and the interviews that were held had been compiled, according to the records submitted by Sh. Ashwani Chopra, Senior Advocate

appearing for respondents No.1 and 2, the same were put up for consideration before the Recruitment Committee of the High Court for conducting selection for the post of Superior Judicial Services in Punjab. The meeting of the said Recruitment Committee was held on 15.01.2016. The Recruitment Committee considered the result that had been put up and at the said stage *inter alia* noticed that no candidate from the General Category (Sportsman) qualified for viva-voce. Accordingly, it was decided to make a recommendation in accordance with Rule 3 (2) of the Punjab Sportsmen Recruitment Rules, 1988 ('Sportsmen Rules' – for short) to fill one more post from amongst the open General Category candidate in order of merit. Rule 3 (2) of the Sportsmen Rules read as under:-

"3. Reservation of Vacancies:-

(1) xxx xxx xxx

(2) Where a reserved vacancy remained unfilled for non-availability of sportsman eligible for recruitment under these rules, such vacancy may be filled in temporarily from any other sources in accordance with the rules regulating the recruitment, and the conditions of service of persons appointed to such posts as if the vacancies was not reserved;

Provided that the reserved vacancy so filled in shall be carried forward for the subsequent occasions arising during at least two years in each of which such occasion arises for recruitment, where after the vacancy in question shall be treated as unreserved."

On the basis of the Final Result (Annexure P-7) detailed in Annexures 'A' and 'B', the Recruitment Committee recommended that the candidates (respondents No.3 to 7) from the open General Category and one Sh. Devinder Kumar from the Physically Handicapped Category be recommended to the State Government for appointment as Additional District and Sessions Judges in the State of Punjab by way of direct recruitment from the Bar under Rule 7 (3) of the Punjab Superior Judicial Service Rules 2007 ('Rules' – for short).

The recommendations made by the Recruitment Committee on 15.01.2016 were considered by the Full Court on 20.01.2016 and were approved.

The Final Result (Annexure P-7) of the Punjab Superior Judicial Service Examination-2015 was issued by the Registrar, Recruitment for Registrar General on 21.01.2016. In Annexure 'A' of the Final Result (Annexure P-7), the merit wise final result of the candidates of the open General Category who had qualified for viva-voce and the names of five candidates (respondents No.3 to 7) appearing at serial No.1 to 5 of Annexure 'A' who had been recommended by the High Court for appointment under the Rules were mentioned. Annexure 'B' of the Final Result (Annexure P-7) mentions the merit wise final result of the candidate of the Physically Handicapped Category who had qualified for the viva voce and that the High Court had recommended the name (Sh. Devinder Kumar) of the candidate appearing at serial No.1 in Annexure 'B' for appointment under the Rules. Annexure 'C' of the Final Result mentions the roll number wise result of the candidates who had failed to qualify for the viva-voce. According to the 'Note'

that was put on the Final Result (Annexure P-7), it was mentioned that marks of the paper(s) where a candidate secured less than 40% marks were not included in the total marks of the candidate.

Annexure 'C' of the Final Result (Annexure P-7) published on 21.01.2016 mentions the roll number wise result of the candidates who could not qualify for viva-voce test. It is from the said list which became available to the petitioner from 21.01.2016 onwards that he learnt that he was placed at the 13th position in order of merit in the written examinations and had secured 362.5 marks. From the said Final Result (Annexure P7) the petitioner also found that one post of General Category (Sportsman) had been assigned to the open General Category.

Therefore, the grievance of the petitioner is that in case five posts were to be filled from the open General Category, then three times the candidates from the open General Category i.e. fifteen candidates were liable to be called for the viva-voce in which case he would have been called as he was placed at the 13th position in order of merit of the written examinations and candidates up to serial No.15 in order of merit of the written examinations were liable to be called. He has, in the said circumstances, filed the present petition for invalidating the selection that has been conducted and for re-conducting the selection process from the stage of viva-voce.

The respondents have opposed the prayer and the stand of the petitioner. It is submitted that four posts for open General Category were advertised for recruitment to the Superior Judicial Services in Punjab. For the said four posts for open General Category, twelve candidates in order of merit in the written

examinations were called and were interviewed. The petitioner, it is submitted, was not in the consideration zone against the four posts for which candidates were to be considered for selection and therefore, he was not called.

The recommendation to fill the fifth vacancy from the open General Category was made by the Recruitment Committee of the High Court on 15.01.2016 after the marks secured by the candidates in the written examinations and the interviews were compiled. It is submitted that prior thereto, there was no recommendation or decision taken to fill the fifth vacancy from amongst the open General Category. In fact according to the respondents, there was no occasion for consideration of the available vacancy of the General Category (Sportsman) at any stage prior thereto.

A perusal of the above facts and circumstances, in fact show that Annexure 'C' of the Final Result (Annexure P7) relating to the roll number wise results of the candidates who could not qualify the viva-voce test would show that there were only two candidates from the General Category (Sportsman) i.e. one at serial No.53 and the other at serial No.74. Both of them did not qualify at the stage of the written examinations. This in fact is also reflected in the roll number wise list (Annexure P5) of candidates who had qualified for viva-voce on the basis of main written examinations that was published on 18.11.2015 wherein the aforementioned note to the effect that, 'no candidate belonging to any other category as per advertisement had qualified for viva-voce' was recorded.

Therefore, the possibility of a decision being taken to convert the General Category (Sportsman) seat to open General

Category could have been taken at the said stage i.e. after the publication of the written examinations result on 18.11.2015, which was before the viva-voce that were conducted on 11.01.2016, 12.01.2016 and 13.01.2016. In case a recommendation and a decision was taken at that stage, then three times the candidates for five posts of Superior Judicial Services of the open General Category i.e. 15 candidates in order of merit of the written examinations were liable to be called for consideration for selection in which case the petitioner being at serial No.13 in order of merit in the written examinations, would have been called. The position, however, may have been different in case a candidate from the General Category (Sportsman) had qualified the written examinations and was eligible to appear for the viva-voce and after appearing, the said candidate was found not suitable for appointment and at that stage a decision was taken to convert the General Category (Sportsman) vacancy to open General Category. In such an eventuality it could be said that there was no earlier occasion to consider the filling up of the General Category (Sportsman) vacancy by converting it to open General Category.

In the present case, however, the position that no candidate from the General Category (Sportsman) was available was known on 18.11.2015 when the roll number wise list (Annexure P-5) of candidates who qualified for the viva-voce was known. This was before the viva-voce conducted on 11.01.2016, 12.01.2016 and 13.01.2016. Therefore, there is some force in the contention of the learned Senior Counsel for the petitioner that it was not the fault of the petitioner that the process for consideration of

converting the General Category (Sportsman) vacancy to open General Category was not taken earlier.

It may also be noticed that the requirement of calling three times the number of candidates for consideration in the viva voce for selection to the posts of Additional Districts and Sessions Judges has been provided for in Paragraph 15 of the Syllabus and Format of Examination in the Scheme of Selection. The same reads as follows:-

“15. Candidates securing 40% or more marks in each paper will be called for viva-voce. But merely securing 40% or more marks would not confer any right to be called for viva-voce. The High Court shall have the discretion to shortlist the candidates equal to three times the number of vacancies for viva-voce. Further, no candidate will be considered to have successfully qualified the Punjab Superior Judicial Services Examination unless he/she obtains 50% marks (read 45% marks for the SC/BC/PH (differently abled person) category candidates) in the aggregate out of the total marks fixed for the written test and viva voce. It is also made clear that no candidate will get the right to be appointed even if he/she obtains 50% marks (read 45% marks for the SC/BC/PH (differently abled person) category candidates) in the aggregate of the written test and viva voce. However, candidates will be appointed strictly in the order of merit (category

wise) in which they are placed after the result of written test and viva voce.” (Emphasis added).

In terms of the above, evidently the High Court has discretion to shortlist candidates equal to three times the number of vacancies for viva-voce. The said Scheme was adhered to and candidates three times of the vacancies available in order of merit in the written examination were called for the viva-voce i.e. twelve candidates were called for consideration for selection for four posts of open General Category of Additional District and Sessions Judges in Punjab.

The Recruitment Committee of the High Court, however, met on 15.01.2016 after the result of the written examination and viva-voce test were put up. It was at that stage when the entire result was available and a recommendation was made by the Committee for filling up the vacant post of General Category (Sportsman) from the open General Category in accordance with the provisions of Rule 3 (2) of the Sportsmen Rules.

During the course of hearing and on deliberations it is agreed by learned counsel for the parties that the case of the petitioner had indeed been considered on 15.01.2016 at the stage after the written examinations and the viva-voce results were available and put up for consideration. Had the case been put up before the Committee earlier i.e. after the written examinations and it was apprised that no person from the General Category (Sportsman) was available, it may have taken a decision in this regard at that stage itself. It is, however, difficult for this Court to comprehend or go into the aspect as to at what stage the Committee was liable to take a decision to convert the General

Category (Sportsman) vacancy to open General Category but nevertheless the rights of the petitioner have certainly been affected. In the circumstances, he was liable to be considered for selection to the post of Punjab Superior Judicial Services in case a decision to fill five vacancies from the open General Category had been taken and such a decision could have been taken after the results of the written examinations were available, which were available on 18.11.2015 when roll-number wise list (Annexure P-5) was issued with the note that 'no candidate belonging to any other category as per advertisement has qualified for viva-voce.' (emphasis added). No other candidates qualified for any other category would include no candidate from the General Category (Sportsman) had qualified for viva-voce.

Mr. Pawan Kumar, Senior Advocate on instructions from the petitioner who is present in Court submits that in case the petitioner is considered for selection to the post of Punjab Superior Judicial Services in the viva-voce test, he would not press the other pleas that have been raised and nothing more would survive in the petition.

After having considered the entire matter, we find that even though the right of the petitioner has been affected but it would not be proper at this stage to invalidate the selection of the respondents who were selected and appointed to the Punjab Superior Judicial Services, besides, are working. This is more so for the reason that if there has been any defect in the selection process, it is not at their behest. The concept of relegating the parties to the stage where there has been an infraction of the law and the rules has been culled out by the Supreme Court.

In Managing Director, ECIL v. B. Karunakar, AIR 1994

SC 1074 a delinquent employee facing a departmental enquiry was not furnished with the copy of the enquiry report holding him guilty of the acts of misconduct. This deprived him of his right of filing a representation. It was said that when an employee is dismissed or removed from service and the inquiry is set aside because the report had not been furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are neither incantations to be invoked nor rites to be performed on all and sundry occasions.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals it was said should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court or Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. The Supreme Court relegated the delinquent employee to the stage where there had been an infraction of the rule.

Similarly in State of Punjab v. Harbhajan Singh Greasy (Dr.), (1996) 9 SCC 322 the report of the Enquiry Officer leading to removal of the respondent in the said case was based on an alleged

admission made by him which was not supported by any written statement of the respondent. Besides, the alleged admission was contradicted by the respondent therein. The High Court set aside the order of dismissal of the respondent and reinstated him in service. Hon'ble the Supreme Court said that it is now well-settled law that when the enquiry was found to be faulty it could not be proper to direct reinstatement with consequential benefits. The matter required to be remitted to the Disciplinary Authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law.

This principle has also been followed in criminal law as well. In the case of Nar Singh v. State of Haryana, (2015) 1 SCC 496 there was an infraction of the provisions of Section 313 of the Code of Criminal Procedure ('CrPC' – for short) inasmuch as material evidence of the forensic science laboratory report and ballistic expert opinion was not put to the accused in his statement. This material evidence was relied upon by the learned trial Court and the High Court for convicting the accused. The Supreme Court said that insofar as the non-compliance with mandatory provisions of Section 313 CrPC was concerned, it was an error essentially committed by the learned Sessions Judge. Since justice suffers in the hands of the Court, the same has to be corrected or rectified in the appeal. In the facts and circumstances of the said case, the appellant was not held entitled to acquittal on the ground of non-compliance with the mandatory provisions of Section 313 CrPC even though to some extent it was true that he was prejudiced on account of omission to put the aforementioned questions. However, the omission on the part of the Court to put the questions could not

enure to benefit the accused. The conviction of the appellant was set aside and matter was remitted to the trial Court for proceeding afresh from the stage of recording the statement of the accused under Section 313 CrPC in accordance with law.

Therefore, in the circumstances, it would be just and proper that the case is put to the stage of the viva-voce test insofar as the petitioner and those at serial Nos.14 and 15 in order of merit of the written examinations are concerned, so that their cases are considered in accordance with law for the fifth vacancy of the open General Category. In other words, the viva-voce test of the petitioner and those at serial Nos.14 and 15 is liable to be conducted. The cases of the candidates at serial Nos.14 and 15 in order of merit of the written examinations are also liable to be considered even though they have not approached this Court as the Court need not confine the relief to the individual petitioner only who has approached the Court and the facts otherwise speak for themselves. However, the candidates at serial Nos.6 to 12 of the final merit list of General Category candidates for the posts of Punjab Superior Judicial Services are not liable to be called as they have already been interviewed and considered for selection. They did not come within the order of merit and their cases for selection stand considered.

Mr. Ashwani Chopra, Senior Advocate appearing for respondents No.1 and 2 has submitted that there is no post available in the open General Category. However, by adopting a balancing process, it would be just and proper that in case the petitioner or the candidates at serial Nos.14 and 15 get more marks than the last appointed candidate in the same selection process,

then the said candidate or candidates would be given appointment either against the other vacancies by converting them or de-reserving them and by making adjustments against the same later or by other means in accordance with law may be even by creating supernumerary posts and in case none of the candidates get marks more than the last appointed candidate in the same selection process then they would have no claim for appointment to the said post.

The writ petition is, accordingly, disposed of with a direction to the official respondents No.1 and 2 to conduct the viva-voce of the petitioner as also of the candidates at serial No.14 and 15 in order of merit of the written examinations of the selection process for recruitment to Punjab Superior Judicial Service, 2015 and in case the petitioner or the candidates at serial Nos.14 and 15 in order of merit of the written examinations get more marks than the last selected candidate of the same selection process then he/they be offered appointment(s) against a vacancy/vacancies if available at the time of appointment from open General category and in case none is available, the official respondents No.1, 2 and 8 shall make appointments against other available vacancies by de-reserving them and adjusting them later and in accordance with any other permissible mode of law including that of creating supernumerary post(s), as the case may be. In case, none of the candidates gets more marks than the last selected candidate in the same selection process, then they would have no claim for appointment to the Punjab Superior Judicial Service in the examinations conducted in 2015.

The necessary exercise shall be conducted by the official respondents as expeditiously as possible and preferably within six months from the receipt of copy of the order.

(S.S. Saron)
Judge

(Avneesh Jhingan)
Judge

09.08.2017
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Note:

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