

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 3999 of 2017 (O&M)

Date of decision : 18.05.2017

Shruti Gupta

.....Petitioner

versus

Institute of Banking Personnel Selection

.....Respondent

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. Sehajbir Singh, Advocate
for the petitioner

Mr. Aayush Gupta, Advocate
for the respondent

Rakesh Kumar Jain, J.(Oral)

C.M. No. 6724 of 2017

This is an application for placing on record document (Annexure P-5).

Application is allowed and Annexure P-5 is taken on record.

CWP No. 3999 of 2017

This petition is filed for the issuance of writ in the nature of certiorari quashing Clause 'C' (V) and (VI) of the advertisement dated 06.11.2016 (Annexure P-1) providing for establishing a qualification criteria which is contrary to the criteria set forth for determining the final merit list and as such is suffering from the vice of arbitrariness.

After notice was issued, the respondent filed the reply and raised a preliminary objection about the maintainability of the writ petition on the ground that the respondent herein is not a State within the provisions of Article 12 of the Constitution of India and, thus, extra ordinary jurisdiction of this Court can not be invoked under Article 226 of the Constitution of India for maintaining the writ

case of ***Satvinder Singh vs. Institute of Banking Personnel Selection (IBPS)*** in CWP No. 14659 of 2014 decided on 10.04.2015, in which similar issue was raised and decided against the petitioner therein, holding that the respondent herein is not a “State” within the meaning of Article 12 of the Constitution of India and the writ petition is not maintainable.

Learned counsel for the petitioner has submitted that in the said order, passed in the case of ***Satvinder Singh's case*** (supra), this Court has observed that there is nothing on record to show that the Government had deep and pervasive control in managing the affairs of the respondent-Institute or that majority of the funding of the respondent-Institute was by the Government. It is also observed that the petitioner could not show that the respondent-Institute was performing any public function. He further submits that in the case of ***Ajay Hasia etc. vs. Khalid Mujid Sehravardi and others, 1981 AIR (SC) 487***, several parameters were laid down to decide as to whether an authority would fall within the definition of State or not. He has primarily emphasized that if the function of the Corporation are of the public importance and closely related to governmental functions then it would be a relevant factor in classifying the corporation as an instrumentality or agency of the Government. The argument raised is that respondent is performing the function of public importance as it is a recruitment agency of the officers for the nationalized banks and, therefore, the respondent would fall within the definition of the State. It is also submitted that even if the respondent is not a State, still the writ petition is maintainable against the private body and relied upon a decision of Supreme Court in ***Binny Ltd. and another vs. V. Sadasivan and others, 2005 AIR (SC) 3202***, in which it has been held that the writ petition against a private body is maintainable but there must be a public law element and it can not be exercised to enforce purely private contracts entered into between the parties.

order passed by this Court in *Satvinder Singh's* case (supra) has further submitted that in the said case, this Court had specifically referred to two decisions of the Bombay High Court in Writ Petition (L) No. 1042 of 2014 decided on 07.05.2014 titled as *Mohan Laxman Gamare vs. Institute of Banking Personnel Selection (IBPS) and another* and Writ Petition No. 2616 of 2014 decided on 18.11.2014 titled as *Shri Arun Kumar Sharma vs. The Director, Institute of Banking Personnel Selection and another*. It is also submitted that a positive finding has been given in the case of *Satvinder Singh's case* (Supra) that the respondent-Institute is only a test conducting agency which only provides service to various Banks and other organizations and being a purely private organization does not fall within the definition of “State” under Article 12 of the Constitution of India.

I have heard learned counsel for the parties and after examining the available record, am of the considered opinion that there is no material to differ with the view taken by this Court in *Satvinder Singh's* case (supra) in which it has been held that the respondent–Institute is only a test conducting agency which provide services to various banks and organizations and is a private organization. There is also no evidence brought on record that the respondent is undertaking any public function except submitting that the recruitment by the Agency for the Nationalized Bank itself is a public function. I do not agree with the submission made by the petitioner and rely upon the reasoning given in *Satvinder Singh's* case (supra). The petitioner is, however, at liberty to avail the remedy of filing a civil suit, if so advised but the writ petition is dismissed as not maintainable.

18th May, 2017
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[Rakesh Kumar Jain]
Judge

Whether Speaking/reasoned Yes/No

Whether Reportable Yes/No