

113

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

CWP No.4954 of 2017

Date of Decision : 10.03.2017

Surender Kumar Sharma

..... Petitioner

Versus

Haryana Staff Selection Commission

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Jai Singh Yadav, Advocate
for the petitioner.

AJAY TEWARI, J. (Oral)

By this petition the petitioner is seeking direction to the respondent to take the interview of the petitioner for the post of Junior Engineer (Mechanical).

The petitioner applied for the aforesaid job and had duly appeared in the written examination held on 29.11.2015 and thereafter was called for interview held on 23.02.2017. On that date he could not appear for the interview for the reason that his father suffered a heart problem. The grievance of the petitioner is that despite having made representation on that very date no other opportunity was granted to him to participate in the interview and the result was declared.

Before going into this issue reference may be made to the

judgment of the Supreme Court in the matter of ***State of Bihar and others vs. Amrendra Kumar Mishra, 2006(12) SCC 561***. In that case, the claim of the respondents was that he had been selected but could not join because the appointment letter did not reach him. The Patna High Court allowed his petition and the matter was carried to the Supreme Court where the appeal of the State was allowed and it was held as under:-

“9. It may be true that the appointment letter was sent by ordinary post; but even in relation thereto a statutory presumption arises. It is also well known that postal delay by itself may not be a ground to take a sympathetic view.

In Maruti Udyog Ltd. v. Ram Lal and Others [(2005) 2 SCC 638], it was observed :

"While construing a statute, "sympathy" has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned.

In A. Umarani v. Registrar, Coop. Societies this Court rejected a similar contention upon noticing the following judgments:

"68. In a case of this nature this Court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.

69. In Teri Oat Estates (P) Ltd. v. U.T., Chandigarh, it is stated:

'36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation where to the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.

37. As early as in 1911, Farewell, L.J. in Latham v. Richard Johnson & Nephew Ltd.' observed:

"We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o' the

wisp to take as a guide in the search for legal principles."

.....10. In the facts and circumstances of this case, in our opinion, the High Court should not have allowed Respondent herein to join his services only on the basis of sympathy.

11. It is now also well settled that in absence of any legal right, the Court should not issue a writ of or in the nature of mandamus on the basis of sympathy.

We, therefore, are of the opinion that the High Court committed a manifest error in allowing the writ petition of Respondent. It is set aside accordingly. The appeal is allowed. However, no recovery shall be made for the period he has actually worked. No costs."

In my opinion, a candidate who misses an interview on the date fixed for him for any reason whatsoever has no right to insist on grant of a further opportunity to attend a re-conducted interview meant only for him. If such an asserted right is recognized by court in a selection process, the time bound recruitment process may never end by the very nature of the prayer made. Direct recruitment cannot be delayed by court interference however good the cause may be.

Consequently, the petition is dismissed.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

March 10, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No