

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

CWP No.13080 of 2010

Date of Decision:-18.07.2018

Sukhjinder Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Abhishek Arora, Advocate and
Mr. R.S. Kalra, Advocate
for the petitioners.

Ms. Deepali Puri, Addl.A.G. Punjab.

Mr. V.K. Sandhir, Advocate
for respondent No.3.

Mr. SandeepJasuja, Advocate
for respondent No.4.

JITENDRA CHAUHAN J.

Prayer in this petition is for quashing of order dated 22.7.2010
(Annexure P-12) passed by the Director Rural Development and Panchayat,
Punjab, Mohali, whereby the services of the petitioner, a regular employee,
have been terminated prior to completion of the inquiry.

Brief facts of the case are that respondent No.2-Director, Rural
Development and Panchayats, Punjab had advertised 2026 posts of

Teachers in Primary Schools of rural areas vide advertisement dated 25.11.2016 (Annexure P-1). The essential qualification for applying for the said post was 10+2 or equivalent diploma with ETT. As per the advertisement, the recruitment was to be made schoolwise and was to be non-transferable in nature. As per the terms of the advertisement, the eligible candidates from the village, in which the school, is located, were to be considered in the first place. In case of non-availability, the candidates from the adjoining villages or adjoining wards of Municipal Areas were to be considered. Candidates from the Block and Towns contiguous with the Block were to be considered next. Lastly, the candidates from the entire District were to be considered. No appointment was to be made outside the District. The qualification/eligibility as per the advertisement (Annexure P-1) was as under :-

“10+2 or equivalent diploma as recognized by the Punjab Government with ETT and equivalent course from Defence Services. Candidates other than Punjab State can also apply. At each level in case of non-availability of ETT candidates upto District level the candidates with B.A./B.Sc./B.Com plus B.Ed. (from any recognized University recognized by UGC) will be considered, they will have to undergo Orientation Training of six months within five years of joining the service. Candidates must have passed Punjabi in Matriculation Examination equivalent or higher.....”

The selection process as per the advertisement (Annexure P-1) was to be done as under :-

'percentage of marks of 12th or the equivalent diploma as the case may be and ETT will be added to prepare a school-wise merit list. No marks will be assigned or any other qualification/activity. For example, a candidate having 62% in 10+2 or in diploma and 52% ETT will have score of $62+52=114$. A minimum of 100 marks (combined) will be the eligibility.'

Both the petitioners had applied for the said posts under the category of Other Backward Classes (OBC) and were issued appointment orders. During the period when the petitioners were working as ETT Teachers, a notice dated 19.11.2009 (Annexure P-4) regarding filing of a complaint by one Sukhdev Raj Sharma against the petitioners regarding their involvement in fabrication in the the list of selected OBC candidates by increasing their numbers of merit than the original numbers, was received and legal action against the petitioners was sought. The petitioners submitted their reply dated 26.11.2009 (Annexure P-5) to the notice (Annexure P-4). In the reply, it was clearly mentioned that with regard to preparation of the merit list, the petitioners had nothing to do and it was the officials of the Department only who prepared the same. Despite that notice of termination of services dated 28.4.2010 (Annexure P-8) was served upon the petitioners to which they replied as under :-

“That I have qualified my graduation from the Guru Nanak Dev University with Roll No.120114 in April 1999 with 1411 marks out of total of 2400 marks and as such I secured 58.79%. I further qualified B.Ed. examination from the Punjab

University in April, 2002 by securing 876 marks out of 1200 marks. My total marks thus became 131.79 as per the criteria laid down by the Department but I erroneously mentioned the total obtained marks without adding the internal assessment marks.”

Learned counsel for the petitioners contends that the other Universities used to add internal assessment marks towards total marks whereas Panjab University does not follow the same pattern. But the Panjab University issued clarification dated 14.11.2006 (Annexure-A) that internal assessment marks could be counted towards over all merit. The clarification (Annexure-A) reads as under :-

“The students who have passed their B.Ed. examination from Panjab University, Chandigarh, have been awarded degrees on the basis of their external assessment only. It has been brought to our notice by some candidates, who have applied for employment that candidates from some other Universities have been awarded degrees on the basis of their internal and external assessment taken together and their percentage as such is being taken into account by the Department of School Education, Punjab. The Panjab University has also shown the internal assessment marks of the students mentioned on their certificates. The

percentage of marks of such candidates from Panjab University at the B.Ed. Examination may be calculated at par with the candidates from the other Universities for employment purpose only.

Learned counsel for the petitioners has placed reliance on judgment passed by a Division Bench of this Court in **CWP No.1418 of 2007**, titled as 'Bharti vs. State of Punjab and others', decided on 17.3.2007, wherein it has been held as under :-

“The solitary contention of the learned counsel for the petitioner is, that while evaluating the merit of the petitioner, internal assessment marks earned by the petitioner for different subjects of the B.Ed. examination, were not taken into consideration.

We have dealt with a controversy arising out of the same advertisement (dated 21.10.2006) as in the present case, while disposing of Civil Writ Petition No.138 of 2007 (Kuldeep Kaur Vs. State of Punjab and others) today, wherein the respondents have categorically stated, that it has been decided, as a matter of policy, to take into consideration the internal assessment marks earned by the candidates during the course of their academic career for determining their merit.

In view of the above, it is apparent, that the prayer made by the petitioner in the instant writ petition has been accepted by the respondents. Accordingly, the respondents are directed to re-determine the marks which the petitioner would earn in terms of the prescribed criteria by taking

into consideration the internal assessment marks earned by the petitioner during the course of her academic career, and thereafter, in case, the petitioner falls within the zone of selection, namely, is awarded marks more than the marks awarded to the last selected candidates, the petitioner be issued an offer of appointment. Needful be done within one month from the date of receipt of a certificate copy of this order.”

In the reply (Annexure P-9), the petitioners also submitted that they have no concern with the preparation of the merit list. Thereafter, in furtherance of the notice and the reply, the services of the petitioners were terminated vide impugned order dated 22.7.2010 (Annexure P-12 colly.) by holding as under :-

“From these facts it is clear that Sh. Sukhjinder Singh, E.T.T. Teacher, Elementary School, Panwan Block Tarsika, District Amritsar with the connivance of staff of Zila Parishad, Amritsar in spite of low merit, secured a job and by doing this he finished away the opportunity of getting job of the candidate who was to get job on the basis of correct merit and in this way the selection of the said Teacher cannot be termed as correct in any way. For this whole matter, the concerned officials and employees of Zila Parishad are responsible and for this fraud, strict disciplinary action is to be taken against them, after conducting a separate inquiry. But with this, there is no effect on the said Teacher's case as his

merit is low which has stated in his clarification also.”

It is further contended that there are number of candidates having lower merit than the petitioners are still working. The respondents got registered an FIR No.86 dated 19.2.2010, under Sections 420, 467, 468 and 471 IPC, at Police Station Civil Lines, Amritsar and at the time of granting bail by learned Additional Sessions Judge, Amritsar vide order dated 08.4.2010 (Annexure P-7) it was held as under :-

“During course of arguments, it is not disputed by learned Addl. P.P. that accused/applicants have not secured appointments by way of forgery or fraud. It is also not disputed that the certificates pertaining to their education qualification were not forged or fabricated. But there was some manipulation in merit list in which the accused persons were given more percentage than actual. On the face of it, if documents produced by the applicants were genuine, it cannot be said that they committed forgery or fraud in manipulating the merit list which must have been prepared by the officials of Zila Parishad which were involved in selection process. No recovery is to be effected from the possession of accused/applicants as all the record is with the Zila Parishad. Besides, applicant Sukhjinder Singh has already joined the investigation. In these circumstances, it would be just and proper if anticipatory bail is granted to the applicants.”

On the other hand, learned State counsel submits that initially final proposed list of the selected candidates was displayed on notice board and it was specifically mentioned that if there is anything wrong in the details of candidates then the same be corrected in person but the petitioners did not tell the Zila Parishad officials that their merit has wrongly been reflected in the proposed final list. To the contrary, the petitioners in connivance with staff of Zila Parishad, Amritsar, inspite of low merit, secured jobs taking away the opportunity of other deserving candidates who were to get jobs on the basis of correct merit. Similarly, learned counsel for respondent No.3 contends that as per the enquiry report submitted by the answering respondent vide letter dated 24.12.2009 to respondent No.2, it is proved in that enquiry that merit of petitioner No.1 is 131.59 whereas at the time of recruitment his merit had been shown as 133.54 and on account of that he was selected as ETT Teacher. This fact was neither disclosed by the petitioners while the merit list was displayed on the notice board nor the same was disclosed by the petitioners at the time of getting appointment. On the basis of enquiry report, respondent No.2 issued show cause notice to the petitioners to explain their position regarding their merit. The petitioners appeared before respondent No.2 personally on 7.7.2010 and petitioner No.1 admitted that his merit is 131.79. Therefore, it is clear that the petitioners in connivance with staff of Zila Parishad, Amritsar inspite of low merit, secured jobs illegally.

The petitioners in response to the written statements filed by

the respondents, filed replication reiterating the report of Assistant Commissioner of Police, North, Amritsar dated 20.12.2010 in which it has been clearly mentioned that as no incriminating evidence has been found against the petitioners, therefore, they are declared innocent. Accordingly, no action is taken against the petitioners in the context of FIR No.86 dated 19.2.2010, registered against the petitioners. This fact has not been disputed by learned counsel for the respondents. Even no challan under Section 173 Cr.P.C. has been filed in Court against the petitioners despite elapse of eight years from the date of the incident. The fact that the police has filed the application for cancellation of the aforesaid FIR, which was registered against the petitioners, has not been denied by learned counsel for the respondents. Learned counsel for the petitioners specifically assets that in view of the report of Assistant Commissioner of Police, North, Amritsar dated 20.12.2010 and the bail orders passed by Additional Sessions Judge, Amritsar dated 08.4.2010, petitioners have not been found responsible for committing any mischief, rather, these were the officers/employees of the Zila Parishad, Amritsar, who had prepared the result and being custodian of the record. Learned counsel for the petitioners also pointed out that there is one candidate Rajwant Kaur, similarly situated as the petitioners having 127.85 marks (against 131.79 and 128.79), she also faced similar charges of manipulating her result. Enquiry (Annexure R-1) was also conducted against her in which the charges were held not proved and it is held as under :-

“There is no fault of the above said teacher in the marks which is shown as more. The more marks had been calculated under mistake by officer/employees of Zila Parishad. As such, no allegations have been proved against Smt. Rajwant Kaur, E.T.T. Teacher, Govt. Primary School, Dugri, Block Naushehra Pannuan, District Tarn Taran.”

Said Rajwant Kaur was exonerated vide Annexure R-2. Vide order dated 19.5.2015 Rajwant Kaur, who had secured 127.85 marks, which is lower than even non-modified marks of the petitioners viz 128.19 and 128.79, was appointed and is continuing in service. Two other candidates did not join, while one candidate had joined and thereafter he resigned from the service. These posts have still lying vacant. These can be filled by way of transfer. It is submitted that the case of the petitioners is identical to that of Rajwant Kaur, whose merit was less than the petitioners, therefore, the same treatment need to be given to the petitioners. Further, vide order dated 19.5.2015 candidates Pawanpreet Kaur and Sachneet Kaur, who were also lower in merit than the petitioners, were offered appointments but they did not choose to join. These posts, in the cadre of OBC are still lying vacant.

After hearing learned counsel for the parties and going through the entire record, the Court feels that the entire dispute of change of marks has arisen on account of internal assessment marks, which were not counted towards the total marks by the Panjab University, Chandigarh, whereas these have been counted by other Universities. As stated above, this matter has been settled by this Court in **CWP No.1418 of 2007** (supra) and it has

been held that internal assessment marks are to be counted. Even clarification dated 14.11.2006 has been issued by the Panjab University to this effect, which is placed on record as Annexure 'A' with CM No.2316 of 2014. Thus, the position that emerges is that both with and without internal assessment marks the petitioners have more marks than Rajwant Kaur, who is continuing in service and also more marks than the two candidates Pawanpreet Kaur and Sachneet Kaur, who did not join as mentioned above, as also more marks than Harmanjeet Singh, who was offered appointment, joined and thereafter resigned, who are identically placed. Thus, the petitioners have been treated differently. This factual position has been conceded by the learned counsel for the Zila Parishad which concession is recorded in the order dated 19.5.2015. Further admittedly Rajwant Kaur on the same facts had been found innocent and is continuing in service. Still further, even the police has given them clean chit and nothing further has been done in the FIR after the report of the ACP North, Amritsar finding the petitioners innocent. Also the three posts offered to Pawanpreet Kaur, Sachneet Kaur and Harmanjit Singh are concededly not filled. Hon'ble the Supreme Court, in **V. Punnam Thomas vs. State of Kerala, AIR 1969 Kerala 91**, observed as under :-

“The Government is not and should not be as free as individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic

Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.”

For the reasons recorded above, the petition is allowed and order dated 22.7.2010 (Annexure P-12) is quashed and the petitioners are ordered to be reinstated in service with all consequential benefits.

July 18, 2018
Vijay Asija

(**JITENDRA CHAUHAN**)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No