

213

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

CWP No.21844 of 2016 (O&M)

Date of decision: July 06, 2018

Gurkirat Singh Dhillon

.....Petitioner

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Animesh Sharma, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG Punjab.

Mr. Raman B. Garg, Advocate and
Ms. Gitanjali, Advocate for respondents No.2 and 3.

Mr. Girish Agnihotri, Senior Advocate with
Mr. Ishaan Bhardwaj, Advocate
for respondents No. 6, 7, 8, 10, 11, 23, 24, 27, 31, 32, 33, 34,
38, 42, 46, 48, 49, 51, 57, 58, 60, 61, 64, 67 & 68.

Ms. Rakhi Sharma, Advocate for respondents No.9 and 17.

Mr. Mohit Jaggi, Advocate for respondent No.13.

Ms. Loveleen Dhaliwal, Advocate for respondent No.14.

Mr. Vijay Rana, Advocate for respondents No.20 & 26.

Mr. Vishal Aggarwal, Advocate for respondents No.28 & 59.

Ms. Gurpreet Kaur, Advocate for
Mr. Pardeep Bajaj, Advocate for respondent No. 35.

Mr. Ithlesh, Advocate for Mr. L.S. Sidhu, Advocate
for respondents No.36, 44, 54 & 63.

Mr. Sandeep Kumar, Advocate
for Mr. Vikram Singh, Advocate
for respondent No.37.

Mr. Sanjay Mittal, Advocate
for respondents No.39, 43, 47, 52 & 56.

Mr. Manu Loona, Advocate
for respondents No.40, 41, 50 & 53.

A.B. CHAUDHARI, J

By the present writ petition, the petitioner has put to challenge the selection and appointment of respondents No.6 to 13 to the posts of Civil Judge (Junior Division)-cum-Judicial Magistrate for Punjab Civil Services (Judicial Branch), for the year 2013-2014 in accordance with selection list dated 01.04.2014 (Annexure P-8) in the reserved category of ESM/LDESM Gen inter-alia.

FACTS

Advertisement No.10 was published by the Punjab Public Service Commission on 08.03.2013 (Annexure P-5) inviting applications for 71 posts of Civil Judge (Junior Division)-cum-Judicial Magistrate in the State of Punjab. Out of 71 posts, 10 posts were reserved for Ex-Servicemen/Lineal Descendent of Ex-Servicemen General, Punjab. It is in that category, the petitioner was qualifying and therefore, he applied under the category of Lineal Descendant of Ex-Servicemen General (Punjab). The petitioner passed in the written examination and had appeared for viva-voce before the Selection Committee. The requirement of marks was minimum 50% in gross written examination and viva-voce for qualifying. The petitioner in total obtained 49.6% marks as against requirement of 50% marks perhaps because he had received only 22.3% marks in the viva-voce. In any case, he could not make it to total 50% minimum qualifying marks.

He was thus, not selected at the result. He had appeared for viva-voce/interview before the selection committee. But then he never knew about the constitution of selection committee and that is why it was not possible for him to challenge the constitution of selection committee which held the interview. It is thereafter, after getting information under R.T.I., he came to know about the factual aspects and hence, he has raised challenge in the present writ petition. Hence, this petition.

ARGUMENTS

In support of the petition, Mr. Sharma, learned counsel for the petitioner vehemently argued that in the category of Ex-Servicemen/Lineal Descendent of Ex-Servicemen (General), Punjab, requirement is two-fold, namely that the candidate should be descendant of the Ex-Servicemen and secondly, he should not already be in service. Accordingly, respondents No.6 to 13 did not qualify in that as shown in the chart at Pages No.15 and 16 of the petition. They have been practicing in various Courts at Chandigarh and District Courts in Punjab. He then submitted that Rule 4 of the Punjab Recruitment of Ex-Servicemen Rules, 1982 (for short 'Rules of 1982') say so.

The next contention raised by the learned counsel for the petitioner is that the selection committee/interview committee, which held the viva-voce was required to be necessarily along with the presence of the Chairman of Punjab Public Service Commission. He submitted that the Chairman, Punjab Public Service Commission did not participate in the conduct of the selection proceedings of selection committee/interview committee for conducting viva-voce and therefore, in his absence, the entire

conduct of the process of viva-voce was fully vitiated and the selection process will have to be knocked-down. He further submitted that the entire process of selection was vitiated and at any rate as a sequel, the appointments of respondents No.6 to 13 runs contrary to the Rules of 1982. He, therefore, prayed for allowing the writ petition.

Per contra, learned counsel for the respondents raised a preliminary objection that the petitioner having participated in the selection/interview process is estopped from challenging the validity of the selection committee on any count whatsoever and thus, cannot be allowed to turn around having failed in the process of selection after having participated.

At the outset, since we have decided to look into the merits of the petition, we do not think that we should consider the said preliminary objection.

Learned counsel for the respondents then submitted that as per the constitution of selection committee and before the process of interview was to take place, Registrar (Recruitment), Punjab and Haryana High Court had written a letter dated 11.03.2014 (Annexure P-13) to the Punjab Public Service Commission requesting the Chairman, Punjab Public Service Commission, Patiala thereof to join interview board from 19.03.2014 to 27.03.2014. However, vide letter dated 13.03.2014 (Annexure P-14), the Secretary of the Punjab Public Service Commission, Patiala informed the Registrar (Recruitment), Punjab and Haryana High Court that it was not feasible for the Chairman of the Commission to participate in the interview process as the Punjab State Civil Services Combined Competitive

(Preliminary Examination) was to held on 23.03.2014 at Chandigarh. According to the respondents, the Chairman, Punjab Public Service Commission thus, declined to participate in the interview board for the process that was undertaken by all other remaining members, i.e. the majority of the interview board and therefore, it was idle to contend that his absence would vitiate the proceedings. He, therefore, prayed for dismissal of the writ petition.

CONSIDERATION

We have carefully gone through the entire petition as well as the documents. Rule 4 of the Rules 1982 reads thus:-

*“4. **Reservation of Vacancies (1)** Subject to the provision of rule 3, #13% of vacancies to be filled in by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab shall be reserved for being filled in by recruitment of Ex-servicemen:*

“Provided that where an Ex-serviceman is not available for recruitment against a reserved vacancy, such a vacancy shall be reserved to be filled in by recruitment of the wife or one dependent child of an Ex-serviceman, who has neither been recruitment against a reserved vacancy under these rule:

“Provided further that the wife or the dependent child of the ex-serviceman shall be recruited against the reserved vacancy subject to the conditions that:-

- (i) he or she possesses the prescribed qualifications and is within the prescribed age limits;*
- (ii) he or she is not already in service;*
- (iii) he or she will be eligible to avail the benefit only once in life.”*

Rule 4 of the Rules of 1982 does provide that a candidate should be the dependent and should not be already in service. The petitioner himself is a qualified lawyer so also respondents No.6 to 13 who began their career as Advocates in the legal profession. Since the contention is that respondents No.6 to 13 are not dependents and are in service, we asked the pointed question as to how the petitioner claims to be the dependent, though, he is also an Advocate, the counsel for the petitioner did not have any answer. That apart, what we find is that merely because a new Advocate enters the legal profession, he cannot be said to be not dependent on the very first day of he entering the legal profession. It is a matter of common experience that a young lawyer entering the profession from the first day has to struggle for being independent and it takes on a few years. It is no gainsaying that the lawyer must be not dependent he having entered the profession from the very first day. We, therefore, reject the submission that respondents No.6 to 13 could not be said to be dependent of Ex-Servicemen.

The next submission is that respondents No.6 to 13 could be said to be in service. We find that respondents No.6 to 13 entered the legal profession and not any service. In proper connotation legal profession cannot be said to be 'service'. There is no fixed pay or salary or income or the terms and conditions of service. The submission will have to be rejected.

The last submission made by the learned counsel for the petitioner has been supported by him with many judgments, which he has filed on record. We do not want to cite any of the judgments as it has not been held in any judgment cited before us that refusal to participate in the interview process by the Chairman of Punjab Public Service Commission, in

the wake of all other members participating in the interview process, would vitiate the entire selection process. As stated earlier, on 11.03.2014, the Registrar (Recruitment), Punjab and Haryana High Court requested the Chairman to join the interview board for interviews to be conducted, but by reply dated 13.03.2014, the said request was declined and the Chairman expressed his inability to join interview board for selection process. Thus, it is not that the Registrar (Recruitment), Punjab and Haryana High Court did not inform the Chairman to participate in the selection process, but it was the Chairman who declined the request to participate. All other members of the interview board duly participated in the selection process, which fact is not in dispute and accordingly, the selection process was completed. We, therefore, hold that the selection process was not vitiated because of the informed absence of Chairman, Punjab Public Service Commission. On the contrary, all other members being present except one (Chairman, Punjab Public Service Commission), as per the law of meetings, the Coram was available and no fault could be found out with the selection process.

Before we part with the judgment, we have noticed that no meeting Rules for conduct of business appear to have been in place. But then, in accordance with the law of meetings, the ordinary requirement of Coram must be held to be 50% of the total members of the selection/interview committee. We, therefore, held that till the time the Rules for conduct of meetings are framed, the Coram shall be 50% of the members of the selection/interview committee.

The upshot of the above discussion is that the present writ petition must fail. In the result, we make the following order:-

ORDER

- (i) CWP No.21844 of 2016 is dismissed;
- (ii) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

July 06, 2018

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**