

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.21322 of 2018

Date of Decision:-20.11.2018

Puneet Goyal & Ors.

.....Petitioners.

Versus

State of Punjab & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Manik Makkar, Advocate for the Petitioners.

JASWANT SINGH, J.

Petitioners four in number have preferred the instant writ petition seeking writ in the nature of mandamus, for directing the respondents to consider them as eligible for applying to the post of Junior Engineer (Civil), Junior Engineer (O&M) Civil, Assistant Corporation Engineer (Civil), Assistant Municipal Engineer (Civil) and Sub Divisional Engineer (Civil) for the advertisement dated 08.06.2018 (P-7) on the basis of order passed by this Court in CWP No.659 of 2018 titled as Simrandeep Singh & Ors. Vs. State of Punjab and Anr. (P-6).

Learned Counsel for the petitioners has argued that in pursuance to advertisement dated 01.07.2015, an examination was conducted, which was scraped on account of irregularities. Now a fresh selection process has been initiated vide public notice dated 08.06.2018

01.07.2015 are to be considered eligible and not those candidates who have acquired eligibility during the interregnum. It is submitted that the said clause in the advertisement is violative of Articles 14 & 16 of the Constitution and liable to be quashed, as the petitioners are entitled for being considered to be posts in question as it is a fresh advertisement. In support of their argument, learned Counsel for the petitioner has relied upon an interim orders dated 16.01.2018 and 29.05.2018 (P-6 & P-6 respectively) passed by Co-ordinate Bench of this Court, who has permitted similarly situated candidates to appear in the recruitment examination.

I have heard learned Counsel for the petitioners at length and have scrutinized the paper book with his able assistance. However, the same is without any merit and, therefore, liable to be dismissed.

Admittedly, petitioners were not at all eligible for being considered to the post in question when the advertisement was issued on 01.07.2015. It is also not in dispute that in pursuance to said advertisement, recruitment exam indeed took place, which was cancelled by the respondent-State vide its public notice dated 28.11.2016 (P-3) on account of mass cheating/leakage. Thereafter, vide public notice dated 27.12.2017 (P-4), respondent-State had informed the candidates that the examination would take place in the month of January, 2018 on various dates for different posts. However, at that point of time, some candidates, who had become eligible by that time, had filed writ petitions seeking consideration under the advertisement of 2015 by stating that from the date of advertisement till the issuance of public notice, they have also become eligible. In the said writ petition(s) notice was issued and candidates were allowed to appear in the examination provisionally vide orders Annexure P-

5 and P-6. However, for the reasons best known to respondent-State, the examination could not be held in January 2018 and, therefore, vide public notice dated 08.06.2018, fresh dates for conducting the examination was published. The said public notice dated 08.06.2018 was challenged before the Division Bench of this Court in LPA No.987 of 2018, whereby the respondent-State has been directed vide interim order dated 22.06.2018, not to conduct re-examination of the posts mentioned in the advertisement dated 08.06.2018 till further orders. It is stated that till date no fresh date for conducting the examination has been issued.

By relying upon the aforesaid facts, as well as the interim orders passed by Co-ordinate Benches of this Court, the Counsel for the petitioners seek consideration under the advertisement issued on 01.07.2015 by stating that public notice dated 08.06.2018 to be a fresh advertisement. The interpretation of the learned Counsel to consider the public notice dated 08.06.2018 as a fresh advertisement is completely misconceived. There is a marked difference between a public notice and an advertisement. An advertisement is always issued on the basis of essential qualifications mentioned in the Statutory Rules governing the posts in question. Whereas a public notice is more in the nature of corrigendum, which is an extension or explanation of the advertisement.

Undisputedly, Statutory Rules also state the exact age of the candidates who are eligible for being considered to the posts proposed to be advertised. In case, the previous advertisement is not superseded by a fresh advertisement, the recruiting authority is bound to follow the age mentioned in the Statutory Rules. The recruiting agency cannot deviate from the Rules governing the posts. Thus, in case the petitioners are permitted to be

considered under the advertisement issued in the year 2015, in the year 2018, then the candidates, who may have become overage in the said three years, would lose a chance for being considered to the posts in question. In any case, it is long settled position of law that Mandamus can be issued in case there is violation of any Constitutional Right. Merely because petitioners have now become eligible, does not give the petitioners any vested right for filing the instant writ petition. Even the candidates who have applied under the posts have not vested right, let alone the petitioners, who are not even applicants for the posts issued in the year 2015.

It is unfortunate that the examination had to be cancelled due to laxity on part of the officials of the respondent-State due to cheating/leaking of paper. However, that does not mean that the candidates, who may have become eligible in the interregnum have a right of consideration. It is settled principle of law that in matter involving recruitment, sympathy has no role to play. The recruiting agency is bound by the Statutory Rules, while issuing the advertisement. Any deviation from the Rules governing the post in question, would vitiate the advertisement itself. The candidates cannot use the Courts as a medium to assist them in committing any illegality by using sympathy as a tool. By deviating from the Statutory Rules, the Courts would be, in fact, acting contrary to the powers vested to the Courts by Constitution itself.

The reliance upon the interim orders passed by Co-ordinate Bench is completely misconceived as same, in no sense are binding upon this Court, as it is only an interim order and not a binding precedent in the form of a final order.

Consequently, finding no merit in the instant writ petition, the

same is hereby dismissed.

(JASWANT SINGH)
JUDGE

November 20, 2018
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>