

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

129

CWP No.28717 of 2019

Date of Decision : 04.12.2019

Ashok Kumar

....Petitioner

v/s

State of Haryana and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Ms. Divya Sharma, Advocate for the petitioner.
Mr. Harish Rathee, Senior DAG, Haryana.
Mr. Namit Khurana, Advocate for respondent No.5.

B.S. Walia, J. (Oral)

[1] Challenge in the writ petition is to Order (Annexure P/1) collectively dated 05.07.2019 and 11.07.2019, revoking the appointment of the petitioner as Statistical Assistant and relieving him from duty.

[2] Brief facts of the case, leading to the filing of the writ petition are that the petitioner and respondent No.5 applied for selection against 02 posts of Statistical Assistant in response to advertisement (Annexure P/2) dated 01.12.2015, against the Economically Backward Persons in General Category (EBPGC). Marks obtained by the candidates in the written examination under the EBPG Category are reproduced as under :-

Sr. No.	Name of the Candidate	Roll No.	Marks in written exam
1.	Jai Parkash	1151500188	120
2.	Anil Kumar	1151500361	118
3.	Ashok Kumar	1151500147	108
4.	Pankaj Kumar	1151500401	106

[3] That perusal of the details given above reveal that the petitioner secured 108 marks in the written examination, while respondent No.5 secured 106 marks. As per the criteria Annexure P/3 adopted by the Commission, candidates, two times the advertised posts were to be called for scrutiny of documents on the basis of result of written test while as per Condition No.2 in Annexure P/3 at page No.61 of the paper book, on scrutiny of documents, eligible candidates two times the advertised vacancies were to be called for interview.

[4] That in the circumstances, as against the 02 posts of Statistical Assistant advertised under the EBPG Category, 04 candidates were called for interview. Thus the petitioner who was at serial number three and respondent No. 5 who was at serial number four as per result of the written examination were called for scrutiny of documents and interview. Eventually, on the basis of marks obtained by the candidates in the written test, as well as interview, the Commission recommended the name of Jai Parkash who secured the highest marks in the EBPG Category, for appointment under the General Category on account of his having secured more marks than the last candidate of the General Category. Further as per the final result Annexure P/6, Anil Kumar, Roll No. 1151500361 and Pankaj Kumar/respondent No.5 i.e. Roll No. 1151500401 respectively were shown to be selected, whereas the petitioner with Roll No.1151500147 was shown in the waiting list. However, Anil Kumar, having obtained 126 marks in aggregate and recommended at Serial No.1 in the list of selected candidates as per result Annexure P/6 did not join. In the circumstances, the petitioner, who was at Serial No.1 in the waiting list having secured 122 marks in the aggregate was appointed due to

the ensuing vacancy. It would be relevant to note here that while respondent

No.5 was appointed as Statistical Assistant vide order dated 20.09.2018 the petitioner was appointed as Statistical Assistant vide order (Annexure P/8) dated 11.01.2019.

[5] That it would also be relevant to note here that prior to the joining of the petitioner, as well as respondent No.5, CWP No.391 of 2018 was filed by one Kapil Dev, with a grievance of his candidature having been wrongfully rejected despite his having obtained 120 marks in the written examination. While issuing notice of motion, said Kapil Dev was ordered to be provisionally interviewed vide order (Annexure P/5) dated 11.01.2018. Eventually on the basis of marks in the written examination as well as interview, said Kapil Dev secured 130 marks in aggregate and was accordingly selected and issued appointment orders pursuant to his writ petition being allowed.

[6] That it also needs noticing that while appointment of the petitioner was subject to final outcome of CWP No.391 of 2018 and any other writ petition pending in the High Court, appointment of respondent No.5 was subject to the outcome of CWP Nos.14886, 16873, 19270, 23764, 23861, 23882, 23906, 24057, 24060, 24098, 24191, 24247, 24278, 24288, 24436, 24535, 27510 & 29740 of 2017 and 1252 of 2018, as also any other writ petition pending in the High Court.

[7] That pursuant to the decision of CWP No.391 of 2018 and selection of Kapil Dev, services of the petitioners were dispensed with vide order (Annexure P/1) (Collectively) in view of his name appearing in the waiting list and he was relieved from duty w.e.f. 05.07.2019.

[8] Sole argument of learned counsel for the petitioner is that as per Annexure P/3, candidates twice the number of vacancies advertised were to be called for scrutiny and interview and in view of Kapil Dev securing 120 marks

in the written examination and his name being included amongst candidates to be interviewed under orders of the Court and eventually being selected, it was respondent No. 5 who had to be excluded from the list of candidates to be called for scrutiny and interview on account of having secured less marks than the petitioner in the written test consequentially slipping from position No. 4 to 5 in the merit of candidates on the basis of written test, consequentially being outside the zone of candidates to be called for scrutiny and interview, consequentially selection, whereas, the petitioner would be the candidate to be called for scrutiny, interview and selection on account of being eventually placed at Serial No.4 on the basis of result of written examination.

[9] *Per contra*, learned counsel for respondent No.5 contended that selection was on the basis of aggregate marks obtained in the written test, as well as interview and since respondent No.5 secured more marks than the petitioner and was recommended for appointment, whereas the petitioner was placed in the waiting list, therefore, it was the petitioner, who was to be ousted on appointment of Kapil Dev.

[10] Learned Senior Deputy Advocate General, Haryana, contended that the dispute was *inter se* the petitioner and respondent No.5.

[11] I have considered the submissions of learned counsel for the parties. Admittedly, selection was conducted on the basis of written test, as well as interview. However, as per the criteria adopted by the Commission, as is contained in Annexure P/3, on declaration of the result of the written examination, eligible candidates, two times the advertised posts were to be called for scrutiny of documents and as per Condition No.2 in Annexure P/3 at page No.61 of the paper book, after scrutiny of documents, only eligible candidates two times the advertised vacancies were to be called for interview.

[12] Respondent No.5 was called for interview, since he was initially at Serial No.4 amongst the list of candidates as per the marks obtained in the written examination whereas the petitioner was at Serial No. 3. However, Kapil Dev, whose candidature had been rejected and who had secured more marks than the petitioner and respondent No.5 i.e. 120 was called for interview pursuant to interim directions issued in CWP No.391 of 2018 and was eventually selected and appointed. In said circumstances, respondent No.5, on slipping to merit number position number five in the written test as against merit position number four of the petitioner on inclusion of the name of Kapil Dev for scrutiny of documents, interview and selection is to be excluded from amongst the candidates to be called for scrutiny, interview and selection since he would not fall amongst the four candidates to be called for scrutiny and interview whereas the petitioner would fall within said four candidates on account of having more marks in the written examination than respondent No. 5. Accordingly, the writ petition is allowed. Impugned orders (Annexure P/1) dated 05.07.2019 and 11.07.2019 etc are set aside. Petitioner is held entitled to reinstatement with continuity in service and full back wages with all consequential benefits.

(B.S. Walia)
Judge

December 04, 2019

'Rajneesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No