

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4466-2020 (O&M)

Reserved on: 9th December, 2020Date of Decision: 17th December, 2020

Bhupinder Kumar Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Shekhar Verma, Advocate for the Petitioners.

Ms. Lavanya Paul, Assistant Advocate General, Punjab.

Mr. Jaswinder Singh, Advocate for Respondent No. 4.

Mr. Arihant Goyal, Advocate for Respondent No. 5.

Mr. C.S. Bakshi, Advocate for Respondent No. 6.

Mr. B.K.Mehta, Advocate for Respondent No. 7.

Dr. S. Muralidhar, J.

1. This petition challenges the validity of the appointment of Respondent Nos.4 to 7 as Presidents of the District Consumer Disputes Redressal Forum ('DCDRC'), under Section 10 (1) (a) of the Consumer Protection Act, 1986 (CPA). The petition also prays for the striking down of Rule 5 (7) (b) and (c) of the Punjab Consumer Protection (Appointment, Salary, Allowances and Condition of Service of President and Members of the State Commission and the District Forum) Rules, 2018 ('PCP Rules 2018') on the ground of it being *ultra vires* Section 30 read with Section 10 (1) (a) CPA as well as Rule 10 of the Punjab Superior Judicial Service Rules, 2007 ('PSJS Rules').

Background facts

2. The background to the present petition is that a notice dated 14th December, 2018 was issued by the State Consumer Disputes Redressal Commission, Punjab (SCDRC) inviting applications from suitable candidates for appointment to 11 posts of Presidents of DCDRCs in Punjab on whole time basis. The notice referred to Section 10 (1) (a) CPA in terms of which “a person who is, or has been, or is qualified to be a District Judge, shall be the President of the District Consumer Forum”. The notice further specified as under:

“In case of candidates who apply from the category of Advocates must have been duly enrolled as an Advocate and has practiced for period not less than seven years and must be an income tax assessee for at least three assessment years preceding the date of application, with gross professional income of not less than rupees three lacs per annum. The applicant shall also be required to attach the proof of his independent engagement and conducting of not less than forty cases (other than bunch cases) per year in the preceding three years.”

3. Under the further sub-head of ‘Qualifications’ it was stated as under:

“Qualifications

1. The Applicant must have passed Matriculation with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi language.

2. The applicants are required to submit their applications in the prescribed form which is annexed, ensuring the following aspects:-

2.1 In case of serving officials:-

(i) applications should be sent through proper channel along with administrative clearance from the appropriate cadre controlling authority.

(ii) In all cases, it may also be clearly stated that the officer is clear from vigilance angle.

(iii) In case any departmental or any other proceedings including criminal has been initiated, pending or decided in the past against the officer under relevant Service Rules, details of the same may be furnished.

2.2 In case of retired officers, the date of superannuation and “No Inquiry Certificate” will be necessary from the last employer.

2.3 ACR dossiers with ACRs of last 10 years of officers found eligible for consideration after preliminary scrutiny, will also be called for. These may kindly be made available within two week where requested otherwise may not be possible to consider their application form.

2.4 Candidates having judicial background are required to furnish copies of their ten best judgments/other judicial orders passed by them along with their application form.”

4. Para 3 of the notice stated that the selection would be made by Selection Committee, constituted in terms of Section 10 (1-A) CPA, and in terms of the procedure prescribed under the PCP Rules 2018. It is further stated that:

“The Selection Committee shall short list the applicants in the following manner, namely

(a) in the case of candidates having judicial background, on the basis of the judgments and other judicial orders passed by such candidates;

(b) in the case of candidates having experience of working under the Central Government or any State Government or an undertaking under the Central Government or the State Government, on the basis of their available Annual Confidential Reports for the last ten years and their experience relevant to the post applied for;

(c) in other cases, on the basis of a written test of two papers as per the following scheme. The qualifying marks in each paper shall be 50%.”

The papers, topics, nature of test, maximum marks and duration, of the written test to be conducted in terms of sub-clause (c), was set out in a tabular form thereafter.

5. Paras 10 and 11 of the notice set out ‘Other terms and conditions’ and “Disqualifications” in terms of Rule 12 of the PCP Rules, 2018. Para 14 of the notice made clear that “interested candidates who would not enclose the documents along with their applications, their documents will not be considered later on.”

6. Para 16 of the notice, which is relevant for the present case, reads as under:

“16. The candidates shall dispatch their applications in quadruplicate such a manner so that the application complete in all respect reach in the office of Registrar, State Consumer Disputes Redressal Commission, Punjab, Dakshin Mark Sector 37-A, Chandigarh on or before 24.01.2019 upto 5.00 PM. Any application received thereafter due to postal delay or for any other reason, will be rejected and disentitle the candidate for call of interview.”

The form in which the candidates were to apply was also appended to the notice.

7. 62 applications were received pursuant to the aforementioned notice. They were scrutinized and examined by the SCDRC (Respondent No.2) and the Selection Committee (Respondent No.3) constituted in terms of Section 10 (1-A) CPA. It is stated on behalf of Respondent Nos. 2 and 3 that of the 62 applicants, 45 were found eligible subject to the production of the required documents. 13 of those found eligible were sitting/former Additional District & Sessions Judges (ADSJs) and District & Sessions Judges (DSJs); 2 were government servants such as District Attorney (DA) and Joint Director, Prosecution and Litigation; 10 candidates were working/retired Presidents/Members of the DCDRCs and 20 candidates were practicing as Advocates. It is stated that from the Advocate category, those who were found eligible, were called for a written test and an interview. The applicants in other categories were called only for an interview. On the basis of interview the Selection Committee (Respondent No.3) made recommendations for appointment to 11 posts of Presidents of the DCDRCs under Section 10 (1A) CPA.

8. The Petitioner was working as Assistant DA/Additional Public Prosecutor in the Department of Prosecution and Litigation, Punjab. He submitted his application on 14th January, 2019. When he did not receive any intimation about the selection process or the fate of his application, the Petitioner made inquiries. He was informed that his application form was received after the cut-off date. The Petitioner points out that the result of the selection was announced in the last week of December, 2019, a copy of which is enclosed

with the present petition as Annexure P-5. According to the Petitioner, those at Serial Nos. 1, 2, 3, 4, 5 and 11 in the select list had earlier been DSJSs/ADSJs. The person at Serial No.9 had earlier also been the President of the DCDRC. Accordingly, in para 17 of the writ petition it is averred that “the Petitioner has no grievance against the aforesaid persons as they are duly qualified for selection and appointment to the post of President, District Consumer Forums in the State of Punjab.”

9. However, according to the Petitioner, remaining persons in the select list viz., those at Serial Nos. 6,7, 8 and 10, who had earlier been either Members of the DCDRCs or were in the employment of the Government of Punjab, would not qualify to be appointed as President of a DCDRC as they did not fulfill the basic qualification for such post in terms of Section 10 (1) (a) CPA. The recommendation of Respondent No.3 for the appointment of the aforementioned 4 candidates, who are impleaded in the present petition as Respondent Nos.4 to 7, as Presidents of the DCDRCs is assailed as being illegal and violative of Articles 14 and 16 of the Constitution of India on the ground that an arbitrary procedure was adopted.

10. The Petitioner questioned the rejection of his candidature and submitted a representation dated 20th December, 2019. However, he did not receive any response. Thereafter the present petition was filed with prayers as noticed hereinbefore.

11. The Petitioner contends that Section 30 (2) CPA does not empower the State Government to prescribe rules for implementation of Section 10 (1) (a) CPA. He submits that insofar as Rule 5, and in particular Rule 5 (7) (b) and (c) of the PCP Rules 2018, prescribed the eligibility criteria for appointment to the post of Presidents of the DCDRCs, it was *ultra vires* Section 30 read with Section 10 (1) (a) CPA as well as Rule 10 of the PSJS Rules read with Articles 233 and 236 of the Constitution of India. It is in the above background that the prayers, noted hereinabove, have been made in the present petition.

Orders in the present petition

12. When the petition was first listed on 18th February 2020, notice of motion was issued and time was sought by Counsel appearing for the State of Punjab for instructions. Thereafter on 2nd March 2020, a statement was made on behalf of the State of Punjab that “its reply was under preparation and State is not taking any steps in the next two weeks to make any appointment as matter is under process”. On 14th July, 2020, the following order was passed by this Court:

“With the consent of learned counsel for both the parties, the matter is being taken up and heard via video conferencing (Webex App software).

Heard on the application for preponement as it is alleged in the application that the respondents have already issued orders of appointment in respect of respondents No.5, 6 and 7, though the respondents had made a statement contrary on the previous date, a prayer for preponement and passing of interim orders is made.

Learned Assistant Advocate General appearing for the State of Punjab submits that the orders have been issued in respect of respondents No.5, 6 and 7 and several others. However, no order of appointment in respect of respondent No.4 is being issued as a complaint against him is pending.

In view of the aforesaid, as the matter requires to be examined by this Court and in view of the proceedings that have transpired before this Court, we think it appropriate to direct that the operation of the orders of appointment issued in favour of respondents No.5, 6 and 7 shall be kept in abeyance till the next date of hearing.

Accordingly, the application stands disposed of.

The matter shall come up for hearing on the date already fixed.”

13. Thereafter on 11th August, 2020, the Court noted that an appointment order had been issued to Respondent No.4, but he had not joined. It was directed that “as in the case of Respondents No.5, 6 and 7 the order of appointment issued in favour of Respondent No.4 shall be kept in abeyance till the next date of hearing”.

Petition not maintainable by the Petitioner

14. In the reply filed on behalf of the Respondent Nos.1, 2 and 3, certain preliminary objections have been raised. Of these, the Court proposes to first deal with the objection that the Petitioner after having participated in the selection process cannot turn around and challenge the validity of the PCP Rules. In support of this proposition, reliance is placed upon the decisions in ***Madras Institute of Development Studies v. Dr K Sivasubramaniyan AIR 2015 SC 3643***, ***Om Prakash Shukla v. Akhilesh Kumar Shukla AIR 1986 SC 1043*** and ***Manish Kumar Shahi v. State of Bihar (2010) 12 SCC 576***.

15. Mr. Shekhar Verma, learned Counsel appearing for the Petitioner, submits that since the Petitioner's application was rejected at the threshold on the ground that it was received beyond the stipulated time, the aforementioned objection is not valid.

16. This Court is unable to accept the plea of the Petitioner that he did not participate in the selection process. It is not disputed that he submitted his application for the post of President, DCDRC, pursuant to the notice issued by Respondent No.2. The said application was forwarded by the Department of Home Affairs and Justice, Punjab Government to Respondent No.2 only on 29th January 2019 and received by the latter on 6th February 2019. The Petitioner did not, at the time of submitting his application, record that he was doing so under protest. It is only when his name did not figure in the list of selected candidates that he decided to challenge Rule 5 (7) (b) and (c) of the PCP Rules, 2018. The settled legal position is that having participated in a selection process, governed by a set of rules, the rejected candidate cannot challenge the validity of the rules. This was explained in detail by the Supreme Court in ***Madras Institute of Development Studies v. Dr K Sivasubramaniyan*** (*supra*) as under:

“20. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer *res integra*.

21. In ***Dr. G. Sarana vs. University of Lucknow & Ors., (1976) 3 SCC 585***, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Anthropology in the University of Lucknow. After having appeared before the

Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:-

“15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in *Manak Lal's* case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting: “It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.”

22. In *Madan Lal & Ors. vs. State of J&K & Ors. (1995) 3 SCC 486*, similar view has been reiterated by the Bench which held that:-

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled

that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla AIR 1986 SC 1043* it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

23. In *Manish Kumar Shahi vs. State of Bihar, (2010) 12 SCC 576*, this Court reiterated the principle laid down in the earlier judgments and observed:-

“We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner’s name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

24. In the case of *Ramesh Chandra Shah and others vs. Anil Joshi (2013) 11 SCC 309*, recently a Bench of this Court following the earlier decisions held as under:-

“In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

17. In view of the settled legal position, the Court upholds the preliminary objection that having participated in the selection process, the Petitioner stands precluded from challenging the *vires* of Rule 5 (7) (b) and (c) of the PCP Rules, 2018. Since, for the reasons set out hereafter, the Court finds no reason to interfere in the matter on merits, it does not consider it necessary to deal with the other preliminary objections.

Rejection of the Petitioner's application is valid

18. The Court further finds that the Petitioner's application was rightly rejected by the Respondent Nos. 2 and 3. In this context it is seen that according to the Respondent Nos. 2 and 3, the Petitioner's application was received in the office of the Respondents on 6th February 2019 whereas the last date and time by which it should have been received, in terms of the notice inviting applications, was 24th January, 2019 before 5 pm. The Petitioner is unable to dispute the above fact. Therefore, the rejection of the Petitioner's application on the ground that it was received by the Respondent No.2 beyond the cut-off date and time cannot be faulted.

19. The Court finds that the Petitioner cannot seek to draw a comparison with the case of Respondent No.7, whose application was forwarded to Respondent No.2 by the Punjab Government together with the Petitioner's application. As explained by Respondent No.2 it received an advance copy of the said application of Respondent No.7 prior to the cut-off date. It is pointed out by Mr. B.K. Mehta, learned counsel for Respondent No.7 that the practice of sending an advance copy of the application prior to cut off date is a recognized one and has been upheld by this Court in ***Dr Hardeep Singh Deep v. State of Punjab 1998 (4) SCT 201***. The Court agrees with this contention and finds that the Petitioner cannot seek parity of treatment with Respondent No.7 on this score.

20. With the candidature of the Petitioner having been rightly rejected, the Court is not persuaded at his instance to interfere with the selection of Respondent Nos. 4 to 7 as Presidents of the DCDRCs under Section 10 (1) (a) of the CPA read with Rule 5 of the PCP Rules, 2018.

Conclusion

21. In view of the above reasons, the Court finds that none of reliefs prayed for can be granted at the instance of the Petitioner. The petition is accordingly dismissed. The interim orders are vacated.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

17th December, 2020
Davinder Kumar

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