

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

CWP No.8455 of 2014

Decided on : February 06th, 2020

Gurmeet Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present : Mr. K.S. Dadwal, Advocate
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

Respondent No.5 *ex parte*.

AUGUSTINE GEORGE MASIH, J. (Oral)

The petitioner has approached this Court praying for quashing of the order dated 09.05.2013 (Annexure P-6) passed by Respondent No.2 - the Special Secretary to the Government of Punjab, Department of Secretariat Administration, on the ground that the petitioner has tampered with the 5th Class certificate by showing therein that he has passed the said exam, whereas he has actually failed, appeal against which preferred by the petitioner to the Principal Secretary, Government of Punjab, Department of General Public Administration-Respondent No.1, has also been dismissed vide order dated 12.08.2013 (Annexure P-8), which was communicated to him on 26.08.2013.

It is the contention of the counsel for the petitioner that for appointment to the post of peon under the Oustee category, there was no

requirement of any educational qualification except for the the person, to be so employed, having knowledge of Punjabi and English language. He further contends that as a matter of fact and as per the policy, there is no such educational requirement, however, this aspect of knowledge of Punjabi and English languages is provided in Rule 5 Clause (d) of the Punjab State (Class IV) Service (Ist Amendment) Rules, 1984 (for short here-in-after referred to as 'Service Rules'). The petitioner belonging to the Oustee category was appointed on the post of peon on 09.04.1992. A copy of the appointment letter has been appended as Annexure P-3. Petitioner had studied upto 5th class but failed to pass the said class. As the policy of the Government of Punjab for Oustees as also the statutory rules did not require a person to have any academic qualification, petitioner was not mandated to submit his educational qualification certificate. He contends that as per the reply, which has been filed by the respondents, the said factual position stands admitted by the respondents in para 12 of the written statement. He submits that the only ground, which has been taken by the respondents for terminating the services of the petitioner, is that the petitioner has tampered with the certificate of school leaving showing himself to have passed 5th class. He contends that in the departmental enquiry, which has been held as also the order of punishment, this is the only reason for dispensing with the services of the petitioner. Otherwise also, the work and conduct of the petitioner has never been adversely commented upon and he had served the respondents for 21 years prior to the date of his termination.

Another aspect, on which the counsel for the petitioner has placed emphasis upon, is the fact that the complaint was submitted by his

paternal cousin brother namely Baldev Singh-Respondent No.5, who has retired as Under Secretary and the litigation between the petitioner and the said respondent No.5 relating to the partition proceedings was in progress. He contends that the whole manipulation and tampering, if any, was either carried out with a *malafide* intent by respondent No.5 or at his behest, because of which the petitioner has been put to peril.

He further contends that as per the requirement of the Service Rules, there was no occasion for the petitioner to tamper with the records, especially with regard to his school leaving certificate, as that had no bearing whatsoever, as far as the appointment of the petitioner is concerned. He, thus, contends that the impugned order cannot sustain and deserves to be set aside.

Upon notice having been issued, reply has been filed by the respondents, wherein the factum with regard to the non-requirement of any educational qualification for appointment to the post of a peon under the Oustee category has not been disputed. As per the Rules 5 (d) of the Service Rules, except for possession of requisite knowledge of Punjabi and English language, no other additional academic qualification and experience is prescribed. Petitioner having been so appointed and his eligibility for appointment to the said post having not been disputed by the respondents, the only objection, which has been raised and the reason assigned for terminating the services of the petitioner is the alleged tampering in the school leaving certificate by the petitioner, where he has projected himself to have passed 5th Class whereas actually he is 5th class fail.

Notice was also issued to the respondent No.5 against whom

personal allegations have been made but he has chosen not to appear and has been proceeded *ex-parte* vide order dated 18.07.2019.

Having considered the submissions made by the counsel for the parties and keeping in view the fact that the petitioner was appointed under the Oustees' quota/category as a peon for whom there were no academic qualifications required and nor was it required as per the statutory rules i.e. Rule 5 Clause (d) of the Punjab State (Class IV) Service (1st Amendment) Rules, 1984, where the requirement is possession of requisite knowledge of Punjabi and English languages, which admittedly the petitioner possesses, there was no occasion for the petitioner to have tampered with the record while showing him to have passed Class 5th as no benefit would have ensued to him. The allegation as made against respondent No.5 although cannot be said to have been substantiated but there appears to have been some reason because of which such tampering has occurred. As per the reply, which has been filed by the respondents, the record pertaining to the appointment of the petitioner has been weeded out because of which this Court is unable to comment upon the nature of tampering which had taken place rather what has been stated in the reply is that the records were weeded out in the year 2004 which is much prior to the date of complaint.

The complaint has been filed on 01.06.2012 and therefore, it is difficult to accept what has been stated by the respondents and to conclude as to on what basis they have come to a conclusion that the petitioner had tampered with the records, when no records were available, which were originally submitted by him at the time of his appointment. Merely because in the service book the entry is that the petitioner has passed Class 5th cannot

be said to have been done by him as this is not the allegation. This could be a mistake by the person who had prepared the service book which cannot be attributed to the petitioner.

In view of the above, the impugned order dated 09.05.2013 and the order of the Appellate Authority dated 12.08.2013 (Annexures P-6 and P-8 respectively), are hereby quashed. The petitioner shall be entitled to all consequential benefits to be released to him within a period of two months.

The petition stands allowed in above terms.

February 06th, 2020
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No