

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 7326 of 2018 (O&M)

Date of Decision: 06.10.2020

Rakesh Parkash

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate
General, Punjab for respondents No.1 to 4.

Mr. Gurminder Singh, Senior Advocate
with Ms. Harpriya Khaneka, Advocate
for respondents No. 5 and 6.

Anil Kshetarpal, J.

The writ petitioner has invoked the extraordinary jurisdiction
of this Court, seeking the following substantive reliefs:

*II) to issue a writ order or direction especially in the nature
of certiorari quashing the final result dated 09.03.2018
(Annexure P-8) for the post of PCS (Executive Branch)
Register A2 processing year 2014 and 2015 being not
only illegal and arbitrary but also against the settled
proposition of law as enumerated in a catena of decisions
rendered by the Apex Court such as **B Ramakichenin Vs
Union of India 2008 (1) SCT 17, K Manjushree Vs.***

State of AP and another 2008(2) RSJ 320 wherein it has been time and again held that the conditions/criteria of recruitment cannot be altered/changed after the start of selection process but still in the present case the same has been changed even at the time of final declaration of result and as such is not sustainable in the eyes of law”.

II) *It is further prayed that a writ in the nature of mandamus be issued directing the respondent No. 2 to prepare the final result afresh as per the criteria laid down in circulars dated 21.04.2014 and 08.12.2016 (Annexure P-2 & P-3) by calculating one mark per year in excess of minimum length of service as per Rule 10(4) of PCS Rules and consequently consider the case of the petitioner for appointment to the post of PCS (Executive Branch) accordingly and also by awarding 18 marks for assessment of ACRs in place of 17 marks as the ACR for the year 2010-2011 is to be termed as very good instead of good which has not been done despite the letter dated 10.11.2017 (Annexure P-6) written by respondent No. 3 to respondent No.2”.*

The Government of Punjab notified the Punjab Civil Service (Executive Branch) Rules, 1976 (hereinafter referred to as “the 1976 Rules”) to regulate the selection, appointment and service conditions of P.C.S. (Executive Branch). In 2011, an amendment was made in the 1976 Rules.

Rule 10 of the amended Rules reads as under:

“10. Preparation of Register A-II of accepted candidates.- (1) The Commission shall invite the applications from amongst the members of Group “A” and Group “B” services, serving in connection with the affairs of the State of Punjab holding ministerial appointments not below the level of Senior Assistants, which shall be submitted to the Commission through proper channel along with their service record.

(2) The applications received alongwith the service records of the candidates shall be processed by the Commission for adjudging the suitability of such candidates, and after conducting a screening test, the Commission shall prepare a list of eligible persons, three times of the number of vacancies.

(3) For final selection of the candidates from the list prepared under sub-rule (2), the Commission shall determine the suitability of candidates on the basis of Annual Confidential Reports, Seniority, Experience and Performance in the Interview by associating two representatives of the State Government; one serving as Secretary, Personnel and General Administration and the other senior IAS officer nominated by the Chief Secretary to Government of Punjab:

Provided that the members of the Commission and representatives of the State Government involved in the selection, shall certify in respect of the each candidates that they have no relation with him.

(4) The name of a person shall not be included in the final list unless he-

(a) is a confirmed hand and has completed eight years continuous service under the Government.

(b) was under the age of fifty four years on the first day of November immediately proceeding the date of submission of names by the concerned authorities; and

(c) is a Graduate of a recognized university.

(5) A list of selected candidates shall be forwarded to the Government by the Commission for entering their names in Register A-II as accepted candidates and these names shall be entered in this register in the order in which they are recommended by the Commission”.

The present writ petition pertains to the recruitment of P.C.S. (Executive Branch) from Register A-II. The writ petitioner failed to secure a place amongst the successful candidates pursuant to recruitment notice dated 08.12.2016, inviting applications for five posts of P.C.S. (Executive Branch), one post for the process year 2014 and four posts for the process year 2015.

The writ petitioner has been placed at serial No. 10 in the final select list published by the Punjab Public Service Commission on 03.09.2018 with 59.87 marks. The writ petitioner has challenged the correctness of the aforesaid result. Pursuant to the notice, separate written statements have been filed by the Punjab Public Service Commission and

respondent No. 5 & 6 (selected candidates). No replication to the written statements has been filed by the petitioner.

On 27.03.2018, while issuing notice of motion, the following order was passed:-

“It is contended that the criteria was changed and notified after the initiation of the selection process and declaration of the final result for recruitment to the Punjab Civil Services (Executive Branch) through the source of Register 'A-II'. It is also averred that the petitioner is also entitled to the award of one (01) extra mark for the ACRs pertaining to the year 2010-2011 as per the grading in Part-III, Clause-C of the Self Appraisal Form itself.

It is further contended that if the marks due as per the original criteria and by acknowledging the overall grading for the ACRs of the aforesaid year 2010-2011 to be 'Very Good' as per the aforesaid factual contention, then the petitioner falls within the zone of appointment against the five (05) vacancies appropriated to Register 'A-II'.

Notice of motion, only, to official respondent Nos. 1 to 4 at this stage for 04.04.2018.

Notice re:stay as well.

On asking of the Court, Mrs. Lavanya Paul, Assistant Advocate General, Punjab, who is present in Court, accepts notice on behalf of official respondent Nos. 1 to 4 and prays for time to seek instructions.

Learned Counsel for the petitioner undertakes to furnish requisite number of copies of the paper-book to the State Counsel during the course of day.

To be shown in the urgent list”.

Learned counsel appearing for the writ petitioner contends that:-

- 1) The writ petitioner has been wrongly deprived of one mark as his Annual Confidential Report for the year 2010-11, has been considered as “Good”, whereas it should have been considered as “Very Good” .
- 2) The Punjab Public Service Commission has changed the criteria for selection after issuance of the recruitment notice and therefore, the selection is liable to be quashed.
- 3) Criteria for award of 15 marks for the interview has been disclosed.

On the other hand, Mr. Navdeep Chhabra, Deputy Advocate General, Punjab, has contended that the Accepting Officer has rated the writ petitioner as “Good”. He submits that the final grading in the Annual Confidential Report is of the Accepting Officer and not on the basis of the grading of the Reviewing Officer. He further contended that there was no change in the criteria, post issuance of the recruitment notice dated 10.12.2016 and there was no statutory requirement of disclosing the criteria to be adopted for assessing a candidate in the interview.

Mr. Gurminder Singh, Senior Advocate, who has appeared for respondent No. 5 and 6, has reiterated the contentions of learned counsel for

respondents No. 1 to 4.

On careful reading of Rule 10, extracted above, it is apparent that the final selection of the candidates is to be made on the basis of the Annual Confidential Reports, seniority, experience and performance in the interview. Still further, in clause 11.2 of the recruitment notice, the criteria to be adopted by the Commission for making selection, was disclosed which reads as under:-

“11.2 Criteria for making selection:

The criteria to be adopted by the Commission is as below:

<i>Sr. No.</i>	<i>Details</i>	<i>Weight-age (Marks)</i>
<i>1</i>	<i>Screening Test</i>	<i>50</i>
<i>2</i>	<i>Length of Service</i>	<i>15</i>
<i>3</i>	<i>Assessment of Service Records (ACRs/APARs)</i>	<i>20</i>
<i>4</i>	<i>Interview</i>	<i>15</i>
	<i>Total marks</i>	<i>100</i>

Thus, out of the total 100 marks, the screening written competitive test was assigned 50 marks, the length of service (15 marks), the assessment of the service record (20 marks) and the interview (15 marks). As noticed above, the Rules framed under the proviso to Article 309 of the Constitution of India, provide that the Commission would select the candidates on the basis of Annual Confidential Reports, seniority, experience and performance in the interview. Further, Sub Rule (2) provides that the commission would hold a screening test to enable it to prepare a list of the eligible persons, three times of the number of vacancies. In the present case, the selection has been made in accordance with the service rules.

Now the stage is set to examine the arguments of learned counsel for the parties.

The first argument of the learned counsel for the writ petitioner is that in the Annual Confidential Report for the year 2010-11, the writ petitioner has been given a numeric grading and rating 61 out of total 100 by the reporting officer. He, while drawing the attention of the Court to page 47 of the writ petition, has submitted that according to numeric grading in range of 61% to 80%, the final grading ought to be of “Very Good” category and therefore, the writ petitioner is entitled to one additional mark. It is pertinent to note that the respondent, while filing the written statement, has explained the criteria adopted for assessing the marks assigned to Annual Confidential Reports. It was decided that A.C.R. with “Very Good” rating would be equivalent to three marks, whereas the A.C.R. with “Good” rating would be entitled to get two marks. It would be noted here that the respondent-Commission, has taken a stand that the final grading in the Annual Confidential Report is of the Accepting Officer and not of the Reviewing Officer. It has been brought to the notice of the Court that the writ petitioner was overall rated as “Good” and not “Very Good”, which was also approved by the Approving Officer. Learned counsel for the writ petitioner has failed to draw the attention of the Court to the Rules or the Instructions to the contrary. In view thereof, there is no substance in the first contention of learned counsel for the writ petitioner.

The second contention of learned counsel for the writ petitioner is with regard to the change of criteria after the recruitment notice has been issued. It would be noted here that the Rules make a provision for holding

of screening test in order to shortlist the candidates to the extent of three times of the number of vacancies. Thereafter, the final selection of the candidates is to be carried out on the basis of Annual Confidential Reports, seniority, experience and performance in the interview. As per the recruitment notice, the criteria for making selection was notified in the recruitment notice, as extracted above. There is no change with regard to weightage/marks assigned to each category. The learned counsel has tried to build its case on the ground that in 2014, when 25 posts were advertised for the process years 2008, 2012 and 2013, the criteria was different. At that time, screening test was for 40 marks, the length of service was assigned 20 marks, the assessment of the service record was assigned 25 marks and interview was for 15 marks. In the category of length of service, it was provided that one mark per year in excess of minimum length of service shall be counted. He further submitted that the Public Service Commission has uploaded a public notice on 09.03.2018, elucidating the criteria for length of service and marks for Annual Confidential Reports. He submitted that thus, the criteria has been changed after the recruitment process has started.

In order to appreciate the argument, it is apt to extract the relevant part of public notice uploaded on 09.03.2018:-

Criteria for length of Service and ACR's Marks

Length of Service Marks = 15

<i>Minimum age for entry into Govt. Service</i>	<i>18 Year</i>
<i>Minimum service for eligibility</i>	<i>08 Year</i>
<i>Therefore, Minimum age for eligibility</i>	<i>26 Year</i>
<i>Maximum age for eligibility</i>	<i>54 Year</i>

Maximum Service which can be considered	28 Year
Marks for each year of service = 15/28	0.54 marks for each complete year

Marks for ACRs = 20 marks for last 5 year ACRs

<i>Outstanding</i>	<i>04 marks</i>
<i>Very Good</i>	<i>03 marks</i>
<i>Good</i>	<i>02 marks</i>
<i>Average</i>	<i>01 mark</i>

It is apparent from examining the aforesaid criteria and the criteria laid down in the recruitment notice, the marks/weightage for length of service remains at 15 and there is no change. Similarly, for Annual Confidential Reports with respect to last five years, the manner of evaluation has been further elucidated, however, the marks for Annual Confidential Reports, remain the same.

In such circumstances, the question is whether there is any change in the criteria or not. On the consideration of the matter, this Court has come to the conclusion that the public notice uploaded on 09.03.2018, does not prove that the criteria has been changed after the issuance of recruitment notice. In fact, through the public notice, the commission has only explained the criteria adopted for calculating the marks/weightage. Such public notice does not amount to change in the criteria. In the Service Rules, marks/weightage to be given to each category, has not been provided. Hence, the Public Service Commission was at liberty to determine the suitability of the candidates in accordance with the Rules. The Public Service Commission has, no doubt, increased the allocation of marks for screening test and consequently, reduced the weightage/marks for the length

of service and Annual Confidential Reports when compared with the recruitment notice issued on 21.04.2014. However, the writ petitioner has not filed the present writ petition with regard to the selection of the candidates pursuant to the recruitment notice dated 21.04.2014. It is the pleaded case of the writ petitioner that he submitted an application on 08.12.2016. Therefore, the recruitment notice issued in the year 2014, is of no relevance. Still further, the criteria notified in the recruitment notice is not established to have been violated. The public notice has only spelled out the manner of calculation of the marks within each category. Such public notice does not amount to change in criteria. In the written statement, it has been explained that after the selection in the year 2014, it was observed that the selection tilted too much in favour of the length of service and the maximum advantage went to the candidates with 20 years of experience in the service. Thus, the necessary changes were made. Keeping in view the aforesaid facts, there is no substance even in this argument of the learned counsel for the writ petitioner.

The last contention of the learned counsel for the writ petitioner is to the effect that 15 marks have been assigned for the interview, however, the criteria basis for award of the marks at the time of interview has not been disclosed. The attention of this Court has not been drawn to any requirement mandating the disclosure of the criteria to be adopted for assessing/evaluating the candidate at the time of interview. The assessment of a candidate in the interview is based upon the subjective evaluation of the candidate by the members of the Selection Committee. It has been noticed that the Rules provide that the Interview Committee would include the

members of the Commission and two representatives of the State Government, one serving as Secretary, Personnel and General Administration and another senior I.A.S. officer, nominated by the Chief Secretary to Government of Punjab. Such broad base Selection Committee has been assigned the task of awarding marks based on performance at the time of interview. Since the attention of the Court has not been drawn to the Rules, the policy instructions or the circular mandating disclosure of the criteria for assessing a candidate at the time of interview, this Court expresses its inability to accept the argument of learned counsel for the writ petitioner.

In view of the above, there is no ground to interfere. Hence, the writ petition is dismissed.

The miscellaneous application(s) pending, if any, shall also stand disposed of in terms of the main order.

(Anil Kshetarpal)
Judge

October 06, 2020
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No