

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
208**

CWP-9647-2015

Date of decision: 27.01.2020

GAGAN GOKLANEY

...*PETITIONER*

V/S

STATE OF PUNJAB AND ORS.

..*RESPONDENTS*

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K.Arora, Advocate,
for Mr. P.K.Goklaney, Advocate,
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab,
for the State.

Mr. A.P.Bhandari, Advocate,
for respondent No.4.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 01.12.2014 (Annexure P-11) passed by the Principal Secretary, Punjab Government, Department of Home Affairs and Justice-respondent No. 1, whereby the claim of the petitioner viz-a-viz respondent No. 4-Amit Ohri, in pursuance to the order passed by this Court in CWP No. 21986 of 2011 titled as Gagan Goklaney vs. State of Punjab and others, has been decided vide order dated 05.08.2014 (Annexure P-9).

2. It is the contention of the learned counsel for the petitioner that the petitioner, in pursuance to an advertisement issued on 15.10.2009,

applied for the post of Assistant District Attorney which were 98 in number in various districts of State of Punjab including 9 posts in District Ferozepur on contract basis on consolidated salary of ₹13,000/- per month. Out of 9 posts, which were meant for District Ferozepur, one post was reserved for Sportsman Category (General), to which the petitioner had put forth his claim. Petitioner was placed at Sr. No. 1 in the merit list in the Sportsman Category (General) whereas respondent No. 4 was at Sr. No. 2. Eight posts, which were meant for the District Ferozepur, were filled up but no person in the Sportsman quota was offered appointment.

3. Petitioner filed CWP No. 10205 of 2010 praying for issuance of directions to the respondents to issue the appointment letter to the petitioner on the post of Assistant District Attorney in view of the fact that the petitioner was placed at Sr. No. 1 in the merit list. Reply to the said writ petition was filed and thereafter, the same was disposed of by this Court vide order dated 20.05.2011 with directions to the competent authority to examine the claim of the petitioner in the light of the Recruitment Rules and pass an order thereon. Personal hearing was given to the petitioner on 02.08.2011 by the Principal Secretary, Punjab Government, Department of Home Affairs and Justice-respondent No. 1. After hearing the claim of the petitioner, who had submitted his certificate which was graded as 'C', respondent No. 1 proceeded to pass an order dated 14.09.2011 (Annexure P-7), whereby his claim for appointment to the post of Assistant District Attorney was declined.

4. Petitioner then was forced to file CWP No. 21986 of 2011 which was allowed by this Court vide order dated 05.08.2014 (Annexure P-9). The impugned order dated 14.09.2011 was set aside and the certificate,

which was obtained by the petitioner, was treated as 'C' Grade Certificate equating with that of respondent No. 4. Further directions were also issued by this Court and in pursuance thereto, the claim of the petitioner viz-a-viz respondent No. 4 was considered and an order dated 01.12.2014 (Annexure P-11) was passed rejecting his claim by asserting that as per the Instructions dated 10.12.1997 (Annexure R-3) issued by the Department of Sports and Youth Services, Punjab, para 6 thereof as per the inter-se preference in the same grade, petitioner would fall below respondent No. 4. This order has now been challenged by the petitioner by filing the present writ petition.

5. Counsel for the petitioner contends that the impugned order dated 01.12.2014 (Annexure P-11) passed by the Principal Secretary, Punjab Government, Department of Home Affairs and Justice, is in total violation of the order passed by this Court in CWP No. 21986 of 2011 titled as Gagan Goklaney vs. State of Punjab and others, decided on 05.08.2014 (Annexure P-9), whereby this Court had proceeded to equate the certificate of the petitioner with that of respondent No. 4. Since two certificates were equally graded, the petitioner being higher in merit should have been issued the appointment letter. This, the counsel contends, clearly goes against the judgment passed by this Court as the authority has proceeded to evaluate on the basis of Para-6 where preference is sought to be given to the certificate which has been obtained by respondent No. 4 over and above that of the petitioner. He contends that once the certificates have been equated, no further consideration, on those certificates, was required to be made by respondent No. 1 and, therefore, the order impugned cannot sustain. He contends that the Instructions dated 10.12.1997 (Annexure R-3) are relatable to the issuance of the Sports Gradation

Certificates but the same do not have anything to say with regard to granting preferential treatment in the certificate which has been graded at a particular level by the competent authority. His further contention is that once a Selection Committee has determined the merit of the candidate placing the petitioner at No. 1, who has been found eligible in all respects with the same grading certificate as that of respondent No. 4, the respondents could not have proceeded to give preference to respondent No. 4 merely on the basis of the Sports Category Certificate which also has been graded for preference in violation of the spirit of Instructions dated 10.12.1997 (Annexure R-3).

6. On the other hand, learned counsel for the respondents has referred to the order passed by this Court in CWP No. 21986 of 2011 especially the concluding para thereof, to contend that had the Court not intended the consideration of the claim of the petitioner viz-z-viz respondent No. 4 in the light of the Instructions dated 10.12.1997 (Annexure R-3), the observation would not have come in the said order as it finds mentioned therein. The merit of the candidate was known to the Court but still the Court had proceeded to pass a direction. The intent and purpose of the order, therefore, was clear and it is in pursuance thereto that respondent No. 1 has proceeded to pass a detailed speaking and reasoned order relying upon the Instructions dated 10.12.1997 (Annexure R-3).

7. As regards the assertion of the counsel for the petitioner that the petitioner was higher in merit and, therefore, should have been appointed on the basis of gradation certificate of the petitioner, counsel for the respondents submits that the merit, which was assessed by the Committee, is totally different viz-a-viz the Sports Gradation Certificate which is the determinative factor with regard to issuance of appointment

letter in case the candidate is eligible. Counsel for the respondents assert that after the merit has been assessed by the Committee, the matter is sent to the Director (Sports), who assesses the inter-se merit of the sports category candidates specifying the merit on the basis of the sports certificates taking into consideration the Instructions dated 10.12.1997 (Annexure R-3). Relying on that ultimate merit determined by the Director (Sports) that the appointment letters are issued to the candidates in the sports category. It is, therefore, asserted that the impugned order is in accordance with law and, therefore, deserves to be upheld.

8. I have considered the respective submissions made by the learned counsel for the parties and with their assistance, have gone through the pleadings and the impugned order.

9. The facts, as have been stated by the counsel for the petitioner and recorded above, are not in dispute. The last judgment, which was delivered in favour of the petitioner, was in CWP No. 21986 of 2011 decided on 05.08.2014 (Annexure P-9). The operative portion of the judgment, as passed, reads as follows:-

“ These instructions of 1997 would now prescribe the Grade-C Certificate to be as follows :-

“GRADE-C

Sportsmen/women who have achieved 1st, 2nd and 3rd position in the following tournaments/championships meets will only be graded.”

The contention of the petitioner is that if he had been issued a C-Grade Certificate by Director Sports, in accordance

with instructions and rules prevailing at that time, then if the subsequent instructions varied the consideration, then it was incumbent upon the respondents to place equivalence on the Certificates which were validly issued prior to 1997 instructions.

I am in complete agreement with this contention, since the 1997 instructions/guidelines prescribe that a sportsmen/women, who achieve 1st, 2nd and 3rd positions in the following tournaments/championships meets, would be graded as per the following criteria :-

(i) Positions holder of Punjab State Championships for Senior and Junior organized by Punjab Sports Department/Punjab Olympic Associations.

(ii) Position holders of Inter District State Championships organized for seniors and juniors under the banner of Punjab Olympic Association/Punjab Sports Department/State Sports Associations.

(iii) Position holders of State School Games organized by Education/Sports Department,

The respondents were bound to undertake a process to evaluate the Certificate issued earlier by assigning them equivalence and relevance in accordance with latest instructions. The earlier Certificates could not have been wished away as there would be no occasion for the authorities

at that point of time to imagine that the subsequent instructions would be at variance. In any eventuality, the official respondents have not even considered the issue appropriately, as they have proceeded on a false assumption on facts that the Certificate issued to the petitioner is by the Cricket Association, which is contrary to the factual aspect of it being issued by the Director Sports. That apart, once the official respondents were conducting the entire exercise, it should have evaluated the case of both - the petitioner and respondent no. 4 by making a comparative analysis, rather than giving appointment to respondent no. 4 by way of default, particularly when both – the petitioner and the said respondent had preferred a writ petition with similar results.

The petition is, therefore, accepted. The impugned order is set aside and as a consequence, appointment of respondent no. 4 would also necessarily go. However, the official respondents would re-consider the matter in the light of what has been stated above by assigning an equivalence to the Certificate issued to the petitioner in terms of its relevance to the present instructions and taking an appropriate decision by making a comparative analysis of the claims of both – the petitioner and respondent no. 4. The needful be done within a period of three months from the date of receipt of certified copy of this order. Till that time, the services of respondent no. 4 shall not be dispensed with. In case, the exercise results in favour of respondent No. 4, needles to say that his

appointment shall persist.” (underlining is mine)

10. A perusal of the above would show that this Court had proceeded to equate the sports certificate which was issued to the petitioner as Grade 'C' as that of respondent No. 4 who also had Grade 'C' certificate, may be as per the 1997 Instructions which were prevalent at that time. In the final paragraph of the order, which has been passed by the learned Single Judge, it is apparent that the Court had clearly mentioned that the respondents would re-consider the matter in the light of the observations of the Court as mentioned in the earlier part and thereafter, assign an equivalence to the certificate issued to the petitioner in terms of its relevance to the instructions then prevalent which obviously means Instructions dated 10.12.1997 (Annexure R-3) and then, take an appropriate decision by making a comparative analysis of the claims of both, the petitioner as well as respondent No. 4. Had the Court intended not to give such a leverage to the respondents, it was well aware that the merit, as far as the petitioner is concerned, was better than that of respondent No. 4 but still the Court proceeded to leave it open to the respondents to decide the issue by making a comparative analysis of both the candidates which obviously means, when seen in the reference of the Instructions, to be the gradation certificate along with the instructions when read in the context of the prevalent Instructions i.e. 10.12.1997 (Annexure R-3). The plea, therefore, of the counsel for the petitioner that the respondents could not re-assess the comparative merit of the petitioner viz-a-viz the gradation certificate, cannot be accepted.

11. The second aspect, which has been argued by the counsel for the petitioner, was that the Instructions dated 10.12.1997 (Annexure R-3)

were limited to the extent of issuing Sports Gradation Certificate. This appears to be correct when seen from the subject which is mentioned in the Instructions dated 10.12.1997 (Annexure R-3). However, in these certificates, the gradations are mentioned separately in the earlier part of the instructions and it is thereafter with further clarifications with regard to the gradation and how it has to be so given, stands mentioned in the paragraph that follows. Para-6, on which the reliance has been placed by respondent No. 1 while passing the impugned order, reads as follows:-

“6. In the matter of rating inter-se, the preference in the same grade will be given in the following descending order:-

- I) Winner.
- II) Runner up.
- III) Third position holder.
- IV) No. of participations.

Regarding senior and junior tournaments/championships senior shall have precedence over junior in the same performance i.e. for example Gold Medalist in senior category shall have precedence over Gold Medalist in Junior Category and Gold Medalist in Junior Category over Silver Medalist in Senior category and so on which implies that participation in Grade 'B' will be considered last of medalists of 'B' category in the same order as of medalists, if after considering the performance criteria as mentioned above the candidate having higher marks obtained in the examination which is considered for admission will decide the seniority from highest to lowest marks obtained by the candidate.”

12. A perusal of the above would leave no manner of doubt that the rating of the gradation certificate, which is of the same level, has to be made in the manner as has been given therein. It is on the basis of these instructions that respondent No. 1 has proceeded to give preference to respondent No. 4 while passing the order dated 01.12.2014 (Annexure P-11). The assessment, as has been made and the conclusion drawn by respondent No. 1, in the considered view of this Court, is the correct application of the Instructions dated 10.12.1997 (Annexure R-3).

13. In view of the above, the impugned order dated 01.12.2014 (Annexure P-11) passed by the Principal Secretary, Punjab Government, Department of Home Affairs and Justice-respondent No. 1 is, hereby, upheld. The writ petition, therefore, stands dismissed.

January 27, 2020
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No