

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-7597-CWP-2021;
CM-7599-CWP-2021 &
CM-7600-CWP-2021 in/and
CWP-6855-2021 (O&M)
Date of decision: - 06.07.2021

Vikramjeet

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Nonish Kumar, Advocate,
for the applicant-petitioner.

Ms. Shubhra Singh, Additional Advocate General, Haryana.
(keeping in view the advance copy given).

(Through Video Conferencing)

HARSIMRAN SINGH SETHI, J. (ORAL)

In the morning, when this case was taken up for hearing, the
following order was passed:-

“CM-7597-CWP-2021

The present application has been filed for preponing the date of
hearing in the main writ petition i.e. CWP No.6855 of 2021, which now
stands adjourned to 14.10.2021.

Notice of the application to the counsel opposite.

Ms. Shubhra Singh, Addl. A.G. Haryana, who is appearing
through video conference, keeping in view the advance copy of
application, accepts notice on behalf of respondent-State and raises no

objection for the grant of prayer as made in the present application for preponing the date of hearing in the main writ petition i.e. CWP No.6855 of 2021.

Keeping in view the request of the parties, the application is allowed. Date of hearing in the main writ petition is preponed to today and the case is taken up for hearing.

CM-7599-CWP-2021

Present application has been filed to place on record letter dated 28.05.2021 as Annexure P-22 and result dated 16.06.2021 as Annexure P-23.

Application is allowed, as prayed for. Copy of letter dated 28.05.2021 (Annexure P-22) and result dated 16.06.2021 (Annexure P-23) are taken on record, subject to all just exceptions

CWP No.6855 of 2021

Learned counsel for the petitioner submits that during the pendency of the present writ petition, the respondents have not only called the candidates, whose names were not mentioned in the original result but, have selected one of the said candidate for the post of Section Officer (Account) against the EWS category and, therefore, the petitioner be allowed to withdraw the present writ petition with liberty to file a fresh one on the same cause of action by impleading the said selected candidate as a party respondent and also by making averments how the said candidate is not entitled to be considered for the said appointment.

Dismissed as withdrawn with liberty as prayed for.

CM-7600-CWP-2021

As prayed for, dismissed as withdrawn.”

Before the order could be signed, when the days' proceedings were about to finish, learned counsel for the applicant-petitioner appeared and stated that he has been being directed by the petitioner for the decision of the writ petition on merits as the main writ petition was withdrawn without his consent.

Keeping in view the said fact, as initial order was yet to be signed, the present main writ petition is being taken up for hearing for

decision on merits.

The present writ petition has been filed with a prayer by the petitioner that the impugned result dated 15.03.2021 (Annexure P-20) declared by respondent by not selecting him under the EWS category for the post of Section Officer Account, as advertized vide advertisement dated 11/2019, be set aside. A further direction is being sought that the petitioner be considered and appointed against the available vacancy, against which no body has been selected.

On 24.03.2021, this Court after recording the fact that one post of Section Officer Account, which was advertised in the EWS category, remains vacant due to non-availability of a suitable candidate, whereas, the petitioner claims himself to be suitable, issued notice of motion.

Today, learned counsel for the petitioner has filed an application with the averments that during the pendency of the writ petition, a candidate having Roll No.1198003533 has been selected against the post of Section Officer Account in the EWS category. The letter/order dated 16.06.2021 selecting the said candidate has been placed on record as Annexure P-23. Learned counsel for the petitioner prays that selection of the said candidate is illegal and could not have been made.

On being asked, whether the selection can be challenged without the selected candidate being a party to the proceedings and without their being any averment in the writ petition as to how the petitioner is terming the selection of the selected candidate as illegal, learned counsel for the petitioner submits that a candidate was selected

during the pendency of the present writ petition, therefore, he need not make the selected candidate a party so as to make his own claim.

Learned counsel for the petitioner further submits that it is for the State to justify the selection in their reply and explain how the candidate has been selected, therefore, at this stage, though a single post advertised in the EWS category in the cadre of Section Officer Account, has already been filled up, still there is no need for the selected candidate to be a party or there being averments in the petition as to how the selection of the candidate, who has been selected is bad.

I have heard learned counsel for the petitioner and have gone through the record with their able assistance.

Admittedly, when the petitioner approached this Court, initially, his contention was that he is the best suitable candidate to be selected and appointed against the single post of Section Officer Account advertised in the EWS category, which post has been kept vacant due to non-availability of the suitable candidates, therefore, the claim of the petitioner is to be considered for the said post being fully eligible. Keeping in view the facts those existed at the time of filing of the petition, notice of motion was issued. Thereafter, circumstances have changed, where a candidate has already been selected on the post of Section Officer (Account) in the EWS category, on which post the petitioner is claiming appointment.

Learned counsel for the petitioner argues that selection of the said candidate is arbitrary & illegal and has been done with the malafide intention so as to defeat the claim of the petitioner. There are no

averments/allegations in the petition to show how petitioner is terming the selection of the selected candidate as bad, as the candidate was selected after the filing of this petition. Petitioner is adamant not to challenge the selection of the selected candidate by incorporating the averments in the writ petition.

Moreover, the arguments of the petitioner with regard to the challenge to selection of the candidate selected vide Annexure P-23 is not the subject matter of the present petition. The prayer of the petitioner is not for setting aside the selection of the candidate, who has been selected vide letter/order dated 16.06.2021 (Annexure P-23). Prayer of the petitioner in the petition is that he be considered against the sole available post of Section Officer (Accounts) lying vacant in the EWS category. Once concededly post being claimed by the petitioner has already been filled during the pendency of the writ petition, no relief can be granted to him as far as this petition is concerned.

It is a settled principle of law that no one can be condemned unheard. It is not disputed by learned counsel for the petitioner that as of now, a candidate has already been selected, which fact has been placed on record by the petitioner himself, vide letter/order dated 16.06.2021 (Annexure P-23). That be the case, the prayer of the petitioner for setting aside the selection of the said candidate cannot be accepted in the absence of the said candidate as party before this Court and also in the absence of any averment with regard to any irregularity in considering and selecting the said candidate against the post of Section Officer Account in EWS category.

Hon'ble Supreme Court of India has held in **Civil Appeal No.6461 of 1998, decided on 26.04.2002** titled as '**B. Ramanjini** Vs. **State of Andhra Pradesh**', that selected candidates are the most affected persons and petition challenging a selection cannot be maintained in the absence of persons selected. Relevant para of the judgment is as under: -

“18. Selection process had commenced long back as early as in 1998 and it had been completed. The persons selected were appointed pursuant to the selections made and had been performing their duties. However, the selected candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that view of the matter, the High Court ought not to have examined any of the questions raised before it in the proceedings initiated before it. The writ petitions filed by the concerned respondents ought to have been dismissed which are more or less in the nature of a public interest litigation. It is not a case where those candidates who could not take part in the examination had challenged the same nor was any public interest, as such, really involved in this matter. It is only in the process of selection and standardisation of pass marks some relaxation had been given which was under attack. Therefore, the High Court ought not to have examined the matter at the instance of the petitioners, particularly in the absence of the parties before the court whose substantial rights to hold office came to be vitally affected.”

Hon'ble Supreme Court has held in **Civil Appeal No.2259 of 1998, decided on 24.04.1998** titled as '**State of Kerala** Vs. **W.I. Services and Estates Ltd. and others**', that no adversely affecting order can be passed and no effective relief can be granted in favour of petitioner without selected persons being impleaded. Relevant part of judgment is as under: -

“7. xxx xxx xxx xxx xxx xxx xxx xxx

In view of the said affidavit filed on behalf of Respondent

4, we have to proceed on the basis that the liquid fuel quota that has been allotted to the State of Kerala has already been allocated for the IPPs of the applicants which had been selected and in the event of its being selected Respondent 1 would be displacing one of the applicants who has been selected. Since none of the applicants has been impleaded as a party to the writ petition, we are of the opinion that the learned Judges on the Division Bench of the High Court were in error in granting relief to Respondent 1 in the said writ petition. We are in agreement with the judgment of the learned Single Judge in this regard.”

Furthermore, initial prayer of the petitioner that the single post of Section Officer (Account) in EWS category is vacant and has not been filled due to the non-availability of the suitable candidate, has already been rendered infructuous keeping in view the fact that the same has already been filled up now, therefore, the prayer of the petitioner that he should be considered and selected against the said post cannot be allowed in view of the subsequent facts, which have been placed on record by the petitioner himself.

As, the petitioner refuses to make the selected candidate a party and especially that in the present writ petition there are no averments of any irregularity being committed by the respondents in selecting a candidate, who has been selected vide result dated 16.06.2021 (Annexure P-23), no relief, as being prayed by the petitioner, can be granted to him.

As the present petition is not being entertained due to non-joinder of necessary parties as well as due to absence of any prayer or averment in the writ petition to set aside the selection of the selected candidate as well as nothing to show how the selection of the candidate,

who has been selected vide Annexure P-23 is bad, petitioner will be free to approach this Court by filing a fresh petition with proper parties and detailed averments in respect of relief claimed therein.

Dismissed with liberty as stated hereinbefore.

July 06, 2021
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No