

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CWP-21126-2020
Reserved on: 05.03.2021
Decided on: 12.03.2021

Kamaljit Singh	Versus	Petitioner
U.T.Chandigarh & others		Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Ms.Renika Gera, Advocate, for the petitioner.

Mr.Nikhil Chopra, Advocate, for the respondents.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. SANDHAWALIA, J.

Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India is for issuance of direction in the nature of mandamus directing the respondents to appoint the petitioner on the post of Assistant Director, Care Support & Treatment (CST), as per the advertisement dated 06.11.2019 (Annexure P-1). Writ in the nature of certiorari is also sought to be issued for quashing the action of respondent No.2-Society whereby the whole recruitment process for the said post had been cancelled, without there being any justifiable reason. Resultantly, directions are sought to the respondents restraining them from issuing fresh selection process for the post in question.

2. The stand of the respondents is that the proceedings of the Selection Committee were prepared but not signed by all members of the Committee, mainly the Director Health Services-cum-Chairman, Administrative Committee, CSACS and therefore, direction was issued to scrap the selection process. A fresh advertisement had been issued on 09.01.2021, which is admittedly during the pendency of the writ petition

and the petitioner was free to apply for the said post and could be considered on merits. It is also admitted that the Project Director, Chandigarh State AIDS Control Society (CSACS) had proceeded on Ex-India Leave from 27.01.2020 to 01.04.2020 and could not return till 07.09.2020 due to the Corona Pandemic and therefore, justification has been given not to issue the appointment order.

3. The action of the respondents, thus, is to be tested on the touch-stone of the observations of the Apex Court in **Shankarsan Dash Vs. Union of India 1991 (3) SCC 47**. If the said action is arbitrary on the face of it and not justifiable, directions are naturally liable to be issued in favour of the petitioner and if the respondents could justify the reasoning to withhold the appointment, the answer has to be given in the negative, against the petitioner.

4. The facts of the case would go on to show that applications were invited for the post of Director (CST) by the Chandigarh State Aids Control Society on contractual basis and selection was to be made on the basis of the written test and interview and the age limit was fixed as 60 years. The salary was to be of a consolidated amount of Rs.25,000/-. In pursuance of the said advertisement, petitioner having applied sat in the written examination on 16.01.2020 and the result was declared on the same date wherein he secured 60.75 marks out of 70 marks. The candidate second in merit secured 44.25 marks which would be clear from the result appended as Annexure P-8. The interview was also held by a panel consisting of Deputy Director General (IEC, Mainstreaming &

LS), National AIDS Control Organization (NACO), New Delhi and Head, Department of Community Medicine, School of Public Health, PGIMER, Chandigarh and Project Director, Chandigarh State AIDS Control Society presided over by respondent No.4. In pursuance of the said interview, the petitioner was told that the CSACS-respondent No.3 was on Ex-India Leave and decision would be taken after her joining. As noticed above, the Director could not come back to India till 07.09.2020 in view of the Covid-19 pandemic. In the meantime, Dr.G.Dewan, DHS-cum-Chairman, Administrative Committee, CSACS-respondent No.4, superannuated, leaving the petitioner in a lurch, which led to the filing of the present writ petition.

5. A perusal of the paperbook would go on to show that fresh advertisement has now been issued for the same post on 09.01.2021 (Annexure P-7) which is on account of the fact that a decision was taken by the respondents on 06.11.2020 regarding scrapping the entire selection process to be scrapped and to initiate fresh selection process on account of these facts. A perusal of Annexure P-8 would also go on to show that out of the 22 candidate who had appeared, 12 candidates had secured more than 50% marks and out of them, 11 had appeared for the interview in which the petitioner was selected. One Monika Sharma and one Manju Arora was put on wait-list No.1 & 2, respectively.

6. The original record was also called for, which would go on to show that Professor & Head of School of Public Health, PGIMER, Chandigarh, had been informed by the Project Director that the

examination was to be held on 16.01.2020 and 70 eligible candidates would be appearing. Two Senior Residents of the Department were to be deputed for marking the answer-sheets and the interview was also slated at 3 PM and the said Officer was asked to be present in the interview process. The candidates were also informed similarly that the interview would also take place at 3 PM and they were required to get all the educational and experience certificates of the relating fields at the time of interview. As per the proceedings of the Selection Committee held on 16.01.2020, all the 4 other Members of the Committee had signed on the proposal whereby the petitioner had been selected. However, the signatures of Dr.G.Dewan unnaturally was missing though he was stated to be part of the selection process at that point of time. Nothing has been brought on record as to why the said Officer did not sign on the proceedings which record as under:

Proceedings of the Selection Committee Meeting held on 16.01.2020 at 3:00 P.M. under the Chairmanship of Dr.G.Dewan, DHS-cum-Chairman, Administrative Commttee for the selection of One Assistant Director (CST) on annual contract for General Category in CSACS

The following were present:

Selection Committee		
1	Dr.G.Dewan, DHS-cum-Chairman, Administrative Committee, CSACS	Chairman
2	Dr.Naresh Goel, Deputy Director General, (IEC, MS&LS, CST), GOI, MOH&FW, NACO	Member
3	Dr.Amarjeet Singh, Prof. & Head, School of Public Health, PGIMER, Chandigarh	Member
4	Dr.Vanita Gupta, Project Director, CSACS	Member
5	Dr.Parvinder Sharma, Assistant Director (Finance)-cum-Administrative Officer, CSACS	Member

For the post of 1 Assistant Director (CST) on annual contract for General Category in CSACS: Out of 70 short-listed candidates by the Scrutinizing Committee, 22 appeared for written test organized by National AIDS Control Organization (NACO), MOH&FW, Govt. of India held at School of Nursing, GMSH-16, Chandigarh. Out of 22 candidates, 12 candidates scored more than 50% marks. Out of 12 candidates, 11 candidates appeared for interview and 1 candidate Ms. Rajni Chaudhary D/o Chhota Lal did not appear. The eligible candidates were interviewed by the Committee. The Committee recommends the following candidates alongwith waiting list valid for a period of one year, to be selected for 1 vacant post of Assistant Director (CST) on annual contract for general category in Chandigarh SACS on the basis of marks obtained by the candidates in qualification, experience, written test and interview.

Recommendation for Selection of Assistant Director (CST):

Sr. No.	Name of the Post	Category	Recommendations
1	Kamaljit Singh S/o Harbhajan Singh	General	Selected

Recommendation for Waiting List:

Sr. No.	Name of the Post	Category	Recommendations
1	Monika Sharma W/o Sunil Sharma	General	Wait List-I
2	Manju Arora D/o Vijay Kumar	General	Wait List-II

Sd/- Mr. Parvinder Sharma AD (Finance)-cum-ADO CSACS, Chd.	Sd/- Dr. Amarjeet Singh Prof. & Head, School of Public Health PGIMER, Chandigarh	Sd/- Dr. Vanita Gupta Project Director
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Sd/- Dr. Naresh Goel, Deputy Director General IEC, MS&LS, CST) GOI, MOH&FW, NACO	Sd/- Dr. G. Dewan, DHS-cum-Chairman, Administrative Committee CSACS”
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7. It would further go on to show that after the return of the

Project Director on 08.09.2020, the file had been submitted for approval

of the Principal Secretary, Health-cum-Chairman with the certification that proper recruitment process had been followed. Thereafter, it was also noticed that the Director, Health Services-cum-Chairman, Administrative Committee had been approached to get the proceedings signed but the Officer had desired that the original file be shown and the file had been shown but the proceedings still had not been signed which led to the cancellation of the selection process. Resultantly, the request of the petitioner dated 21.11.2020 (Annexure P-6) was also rejected on the file. Thereafter, the post was readvertised, stay of which is also sought by filing CM-945-CWP-2021.

8. From the above facts and circumstances, it would be apparent that for no fault of the petitioner or on account of any fault in the selection process, the same has been scrapped and without taking to its logical end. The fact remains that the Director, Health Services, though part of the selection process on 16.01.2020 had not signed the proceedings whereas all the other Members had duly signed the said proceedings. The action of the respondents can be termed as totally arbitrary and cannot be bonafide on any account, would attract the exceptions of the judgment of the Apex Court in Shankarsan Dash (supra), relevant portion of which is reproduced as under:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to

qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in [State of Haryana v. Subhash Chander Marwaha](#), [Neelima Shangla v. State of Haryana](#), or [Jitendra Kumar v. State of Punjab](#).”

9. No logical reason is shown as to whether the petitioner did not have the requisite qualifications or that the post is not to be filled up as the fresh advertisement has been issued and therefore, the requirement for the post very much existed. The selection process was, thus, carried out by a validly constituted Committee, after associating the specialists from PGIMER, Chandigarh. Therefore, in the absence of any fault in the recruitment process and the petitioner having obtained the highest marks in the written examination and having done well in the interview, had made the cut and therefore, he cannot be denied the benefit of the said selection process on account of the inaction of the respondents.

10. Resultantly, the present writ petition is allowed and the action of the respondents in readvertising the post of Assistant Director, is quashed. A writ of mandamus is issued directing the respondents to

issue appointment letter to the petitioner within a period of 4 weeks from the receipt of certified copy of this order. The original record be returned to Mr. Chopra, after obtaining proper receipt.

12.03.2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No