

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

**CWP-20939-2015 (O&M)
Date of decision : July 05, 2022**

Anil Kumar

.....Petitioner

Versus

The Punjab and Haryana High Court and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.

Mr. Gaurav Chopra, Senior Advocate with
Ms. Meghna Garg, Advocate for respondent No. 3.

LISA GILL, J.

Prayer in this writ petition reads as under:-

“ For issuance of a writ in the nature of certiorari for quashing the impugned action of the respondents for rejecting the claim of the petitioner for appointment to the post of Clerk, in pursuance of Employment Notice dated 23.11.2012 (Annexure P1);

And

Further issue a writ in nature of Mandamus directing the respondents to consider the case of the petitioner for selection/appointment to the post of Clerk from due date i.e. the date when candidates who have secured lesser marks in the written test were appointed as Clerks in various subordinate Courts in Haryana in pursuance of Employment Notice No. 7C/CRA/HR/2012, dated 23.11.2012 (Annexure P-1), with all consequential benefit i.e. seniority, Fixation of pay etc.;

OR

To issue any other appropriate writ, orders or directions as this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the case.”

It is submitted that petitioner pursuant to employment notice dated 23.11.2012 applied for the post of Clerk in General category being fully eligible. Petitioner having been taken the written test in March, 2013 is stated to have qualified by securing 52 out of 100 marks. Petitioner thereafter appeared in the proficiency test in operation of Computers held on 15.06.2013 and qualified therein securing 10.60 marks out of 20. It is further stated that petitioner submitted for scrutiny and verification of his original testimonials/certificates. Final result in respect to 790 advertised posts was declared on 07.03.2014. However, petitioner did not figure in the select list. It is submitted that candidates in the General category, who had secured lesser marks than petitioner, were reflected as selected and were appointed at various subordinate courts at State of Haryana from the month of April, 2014 and onwards. It is stated that petitioner on inquiry under RTI Act was informed vide letter dated 02.02.2015 that his candidature for the post of Clerk was cancelled on 07.03.2014 on the ground that he failed to appear/explain his position about the doubt which had arisen about his identity and credentials before the Central Recruitment Agency on 11.02.2014 in response to letter No. 2417/CRA on 27.01.2014. It was further disclosed that selection/merit list was prepared on the basis of marks obtained by candidates in the written/screening test. It is averred that letter dated 27.01.2014 was never received/delivered to the petitioner at the relevant time. Petitioner again applied for information under the RTI Act and it was informed vide communication dated 24.03.2015 that letter dated 27.01.2014 was sent to the petitioner through registered post on 28.01.2014 and reasons for non-receipt be obtained from the concerned post office. It is further informed that intimation with regard to appearance in person before the Central Recruitment Agency was also sent to the petitioner on his e-mail I.D. on 27.01.2014. Reason for non-delivery of letter

dated 27.01.2014 through Registered Post was revealed to the petitioner, to be non-availability of receiver in the village, as per the report recorded by the concerned post office on 05.02.2014. It is submitted that non-appearance of the petitioner before Central Recruitment Agency on 11.02.2014 due to non-communication of letter was unintentional and in fact the lapse did not occur due to any default on the part of the petitioner, therefore, petitioner should not be victimised for the same. Legal notice dated 08.06.2015 was served by the petitioner seeking appointment as Clerk on the basis of higher merit. When no action was taken thereon, present writ petition was filed, with the further averment that 424 vacancies of Clerks in various Subordinate Courts in Haryana are still lying vacant.

Notice of motion was issued in this writ petition on 01.10.2015. It was brought to the notice of the Court that on complaints being received raising allegations of certain selected candidates having cleared test by impersonation, fourteen (14) such candidates were short listed and they were informed by e-mail, Registered Post and SMS to appear before the Central Recruitment Agency on 11.02.2016 to explain their position alongwith their original testimonials regarding qualification, date of birth, photo identity proof etc. It was clarified that in case the candidate failed to appear/explain the position, his candidature shall be cancelled and necessary action taken. 11 out of 14 candidates were appeared. Four of the candidates were found cleared while candidature of remaining seven (7) candidates including that of the petitioner was rejected.

While noting these facts, Co-ordinate Bench on 15.02.2016 directed the petitioner to appear before respondent No. 3 – Society within the next ten days and necessary exercise was directed to be completed in respect to the petitioner

for getting the written test done for comparison to reach at a final conclusion with regard to his candidature. Relevant part of order dated 15.02.2016 reads as under:-

“ However, in the meantime, on the basis of a complaint, the Society came to know that some selected candidates had cleared the test by impersonation and 14 such candidates were short-listed and they were informed by way of e-mail, registered post and SMS to appear before the Society on 11.2.2016. Out of 14 candidates, eleven candidates appeared and four were found to be cleared and the result of the remaining seven candidates was rejected. The petitioner's case is that he did not receive the necessary information through e-mail and registered post and he has not been considered by the Society.

Faced with the situation, a direction is being given that the petitioner will appear before the Society within the next ten days and, thereafter, the necessary exercise be completed by the respondent. The respondent shall conduct the necessary exercise for getting the written test done for comparison to reach at a final conclusion with regard to his candidature. The matter is being adjourned to 11.03.2016 for filing reply.”

Permission was afforded by the Court on 11.04.2016 for having comparison of writing from CFSL with the petitioner's answer sheets. Report dated 20.01.2017 of Forensic Science Laboratory, Chandigarh was received wherein the expert did not arrive at a specific conclusion regarding the difference of sample handwriting and on written examination sheet but sought further English writing and signatures appended by the person concerned during normal course of routine for furnishing definite opinion. Co-ordinate Bench on 12.05.2017 while taking the said report of CFSL on record opined that suspicion is raised regarding sample writings and writing in examination sheet being of one person. Matter was adjourned for consideration whether in the given circumstances further report of hand writing expert is required or on the basis of material on record and on bare reading of two writings, the case could be decided.

With the consent of both the parties, it was directed on 22.05.2017 that the documents be sent to the Central Forensic Science Laboratory, New Delhi for fresh opinion and report on the questioned handwriting and signatures already sampled and marked. Relevant part of order 22.05.2017 reads as under:-

“ The petitioner has been denied appointment to the post of Clerk as there is a controversy whether it was petitioner or some impersonator who had appeared in the written examination for the said post. Report of the Forensic Science Laboratory was called for on comparison of the questioned writings and signatures in the answer sheet with the specimen writings and signatures obtained from the petitioner. The Central Forensic Science Laboratory, Chandigarh has felt that some admittedly genuine English writings and signatures written by the person concerned during normal course of routine, in some existing documents and containing the common letters and their combinations as occurring in the questioned writings and signatures, may be helpful in the scientific interpretation and expressing a definite opinion. As such, the Central Forensic Science Laboratory has requested that admittedly genuine English writings and signatures written by the petitioner during normal course of routine be provided to furnish the definite opinion.

On asking of the Court, it has been informed that when the petitioner was asked to give specimen handwriting and signatures, he had been provided the typed contents copied from the original answer sheet.

In view of said circumstances, I am of the opinion that it will be prudent in the interest of justice either for this Court to itself compare the specimen hand writing and the handwriting appearing on the paper or to get a second opinion from another laboratory.

With the consent of both the sides, let the documents be sent to the Central Forensic Science Laboratory, Block No. 4, CGO Complex, Lodhi Road, New Delhi – 110003 requesting for a fresh report on the questioned handwriting and signatures already stamped and marked, for fresh opinion.”

CFSL report dated 28.08.2017 from New Delhi was received and opened in Court on 18.12.2018. Original answer sheet, specimen handwriting of the petitioner and two admit cards were also taken on record. As per report dated 28.08.2017, it is categorically opined that authorship of the questioned writings and signature marked Q-1 to Q-4 and Q-6 could not be connected with the writer of specimen writings and signatures marked S-1 to S-6 attributed to petitioner - Anil Kumar.

Learned counsel for the parties were afforded time to inspect the file and address arguments. Matter was thereafter adjourned on three occasions at request of learned counsel for the petitioner.

Today, learned counsel for the petitioner submits that despite the CFSL report being on record, a formal reply should nevertheless be filed by the respondents. However, I find this submission to be devoid of any merit. It was the categorical stand of the petitioner that he had not received letter dated 27.01.2014 due to which he could not appear before respondent No. 3 for verification of his candidature on 11.02.2014. It is a matter of record that due opportunity was afforded to the petitioner inasmuch as it was directed vide order dated 15.02.2016 that the petitioner would appear before the Society and necessary exercise for getting the written test done for comparison to reach at final conclusion would be carried out.

Learned counsel for the petitioner is unable to deny that the entire exercise has indeed been carried out. Though a valiant effort has been made by learned counsel for the petitioner to submit that the opinion of handwriting expert cannot per se be taken to non-suit the petitioner, it is to be noticed, at this stage, that original answer sheet as well as specimen hand writing of the petitioner is on record.

Co-ordinate Bench on 12.05.2017 had opined that perusal of sample writings and the writing in examination sheet clearly raises a suspicion about the writing not being of the same person. However, by way of abundant caution and with consent of both the sides, documents were sent for forensic examination yet again to the Central Forensic Science Laboratory, New Delhi for a fresh report. There is a categoric report dated 28.08.2017 by CFSL, New Delhi to the effect that authorship of the questioned writings and signature cannot be connected with the writer of specimen writings i.e. the petitioner. Perusal of the original answer sheet as well as specimen handwriting of the petitioner by naked eye, also reflect the same position. It is pertinent to note at this stage that original answer sheet as well as specimen handwriting of the petitioner was duly pored over and scrutinised by learned counsel for the petitioner, during the course of hearing and there is not much of an objection, which can be raised by him. Therefore, in the given facts and circumstances of the case, petitioner has no right whatsoever to claim appointment to the post of Clerk as prayed for.

No other argument has been addressed.

Keeping in view the fact that there is nothing on record to indicate whether any action has been taken against any of the other candidates whose candidature had been rejected, no order to this effect is being passed.

No other argument has been addressed.

This writ petition being devoid of any merit is dismissed.

(LISA GILL)
JUDGE

July 05, 2022

rts

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No