

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

**C.M. No. 1414-CWP of 2022 in/and
CWP No. 26418 of 2021
Date of decision: 09.02.2022**

111+217

Manisha

....Petitioner(s)

Versus

Union of India and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Tejeshwar Singh, Advocate,
for the petitioner.

Mr. S.P. Jain, Sr. Standing Counsel,
with Mr. Namit Kumar, Advocate,
for respondent No.1-UOI.

Mr. D.S. Nalwa, Addl. A.G., Haryana,
for respondents No.2, 5, 6 and 7.

Ms. Alka Chatrath, Advocate,
for the applicant-respondent No.3.

Mr. Govind Tanwar, Advocate,
for Mr. Kanwal Goyal, Advocate,
for respondent No.4.

Mr. Anurag Goyal, Advocate,
for respondent No.8.

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

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 1414-CWP of 2022

Application for placing on record affidavit on behalf of UPSC is
allowed, subject to all just exceptions.

Affidavit filed on behalf UPSC is taken on record.

C.M. stands disposed of.

CWP No. 26418 of 2021

The present writ petition has been filed under Articles 226 and 227 of the Constitution of India for setting aside the letter dated 16.11.2021 (Annexure P-19) whereby, respondent No.5 had forwarded the name of Rakesh Kumar-respondent No.8 for preparation of the select list of 2019 for appointment by selection from Non-SCS officers to the IAS of Haryana Cadre. Similarly, challenge has also been raised to the letter dated 13.12.2021 (Annexure P-18) wherein, the Union Public Service Commission-respondent No.3 has addressed a letter to the Chief Secretary to Government of Haryana-respondent No.5 whereby, the interview dates were refixed for the said purpose wherein, the name of respondent No.8 also prevailed. Challenge has also been put forth to the order dated 19.04.2021 passed by the Central Administrative Tribunal, Chandigarh Bench (Annexure P-17) whereby, the original application filed by respondent No.8 had been allowed and the State Government was directed to consider the case of the said applicant (respondent No.8 herein) for forwarding his service record to the Selection Committee for appointment to the said posts.

On 22.12.2021, the following contention as such had been noted by counsel for the petitioner:-

“The present petition has been filed challenging the order of the Central Administrative Tribunal (in short 'the Tribunal') dated 19.04.2021 (Annexure P-17) whereby, respondent No.8-Rakesh Kumar was held eligible by coming to the conclusion that he was holding a gazetted post in a substantive capacity under the State Government and, therefore, he was liable to be considered for appointment as IAS by the Selection Committee as per IAS Regulations, 1997. The same has been done on account of the fact that the applicant before the Tribunal had been appointed on

22.04.2010 as a DDPO and was confirmed only on 19.01.2021, which was after the cut off date of 01.01.2019, though with retrospective effect. It was also noticed that he had obtained adequate merit in the examination conducted by the Haryana Public Service Commission.

It is the case of the petitioner that against the 5 vacancies which were advertised vide Advertisement No.1 dated 20.06.2020 (Annexure P-3), he was also an applicant and the name of 25 persons had been sent to the Union Public Service Commission (respondent No.3 herein). On account of the impugned order passed by the Tribunal, the petitioner has been ousted from the list of 25 persons since he was the lowest in merit. It is the sole contention of the counsel for the petitioner that the petitioner was not even heard by the Tribunal and he was a necessary party and his interest has been adversely effected. It is submitted that vide communication dated 13.12.2021 (Annexure P-18) from the respondent no. 3-The Chief Secretary, Government of Haryana to respondent no. 5, the interviews which were earlier scheduled have now been pre-poned and now are to be held on the 27th and 28th December, 2021 and the name of the petitioner, thus, does not figure in the said list.

Notice of motion.

Mr. Namit Kumar, Advocate accepts notice on behalf of respondent No.1-Union of India; Mr. D.S. Nalwa, Addl. A.G., Haryana accepts notice on behalf of respondents No.2, 5, 6 and 7; Ms. Alka Chatrath, Advocate accepts notice on behalf of respondent No.3 and Mr. Balvinder Sangwan, Advocate accepts notice on behalf of respondent No.4-HPSC.

Adjourned to 09.02.2022, for service of respondent No.8. Service upon respondent No.9-Tribunal is dispensed with.

Keeping in view the above, respondent No.3-UPSC shall also interview the petitioner provisionally, subject to the

final outcome of the writ petition. His marks can be kept in a sealed cover to be produced before this Court to examine whether he has made the cut or not and whether there is any further purpose in continuing with this writ petition in case he does not make the cut. It is obvious that in case he does not make the cut in the first 5 candidates, the writ petition itself would obviously be rendered infructuous and, therefore, there should be no reason why respondent No.3 should not carry on with the said schedule.

Copy of the order be given to counsel for the parties under signatures of the Bench Secretary.”

In pursuance to the said directions, affidavit of Dr. Pradeep Kumar Joshi, Chairman of the respondent No.3-Commission has been filed, wherein, reliance had been placed upon Section 123 of the Indian Evidence Act, 1872 to not produce the recommendations of the Selection Committee held on 27.12.2021 and 28.21.2021 in respect of the petitioner and privilege has been claimed in that regard. However, the said recommendation as such of the Selection Committee regarding the petitioner has been produced by Mr. Rajeev Kumar, his Principal Private Secretary before this Court only for its legal scrutiny and satisfy itself about the bona fides. The said record has been produced that was in a sealed envelop, shows that the petitioner has failed to make the cut against the 5 vacancies available. Her name was duly considered by the Committee in pursuance of the directions issued by this Court which have been reproduced above.

It is also to be noticed that another affidavit of Ashok Prasad, Under Secretary, UPSC has been filed by way of filing C.M. No. 1414-CWP of 2022 that there would be delay in adjudication of the claims and entitlements of the petitioner which has caused delay in finalization of the select list.

Keeping in view the above, we feel that the sole grouse of the petitioner at that point of time which was that her name was not considered on account of the litigation which had been initiated by respondent No.8 without arraying her as a party has been redressed after considering that she had not made the cut against the 5 vacancies and, therefore, the present writ petition has been rendered infructuous.

Therefore, the present writ petition is disposed of having been rendered infructuous. However, liberty is granted to the petitioner as such to raise challenge, if any left, in appropriate proceedings. The said result/proceedings of the Selection Committee regarding the petitioner, which was produced in a sealed envelop, has been put back in the same envelope and resealed and handed over to Mr. Rajeev Kumar, Principal Private Secretary, who had produced the same.

(G.S. SANDHAWALIA)
JUDGE

09.02.2022
shivani

(VIKAS SURI)
JUDGE

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