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

CWP NO. 26894 OF 2022

DATE OF DECISION: 23.11.2022

Virender and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R. K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate,
for the petitioners.

Mr. Pankaj Middha, Addl. AG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of certiorari seeking quashing of order dated 30.12.2016/03.01.2017 (Annexure P-4), vide which the appointment of the petitioners to the post of Fisherman-cum-Watchman has been cancelled. Further prayer has been made to quash enquiry report dated 25.06.2018 (Annexure P-14), vide which their selection on the post of Fisherman-cum-Watchman has been declared illegal and their services have been terminated. Prayer has also been made for their re-instatement along with grant of all consequential benefits.

2. This is second foray of the petitioners before this Court assailing the same selection process, which was subject matter of controversy earlier though, but there was no formal prayer in the earlier writ petition to quash/set-aside the enquiry report dated 25.06.2018

(Annexure P-14) rendered by Special Committee which had been constituted to look into the irregularities, if any, in the selection process carried out *qua* the post in question. It would be appropriate to reproduce the relevant extract of earlier order/judgment dated 30.08.2022 rendered by me in CWP No. 81 of 2017 (O&M), as below:

“xxx

4. *What thus emerges is that the petitioners are aggrieved by the cancellation of their selection carried out against advertisement (Annexure P-1). Qua the controversy in hand, in fact I need not labour all over again as the same has been succinctly summed up in order dated 17.11.2017 along with some observations made by Amol Rattan Singh, J. (as he then was in this Court) in the following words:*

“Consequently, while keeping this petition pending, it is directed that the Chief Secretary to the Government of Haryana, would appoint an Inquiry Committee of senior officers, with the Chairman of the Committee being an officer senior in a rank to the Director, Department of Fisheries, Haryana. The Committee would go into the question of whether the selection process in question was fairly conducted or not.”

5. *Thereafter, a committee of three senior functionaries was constituted, who were serving in Indian Administrative Services i.e. the Director, Skill Development & Industries Training Department, Managing Director, HAFED and the Principal Secretary, Monitoring & Coordination Department, who after threadbare going into all the allegations, concluded as follows:-*

“27. The Committee has considered the submissions made by different stakeholder and also examined the record pertaining to the selection process. After careful perusal of the same this Committee is of the opinion that the selection process in question had not been conducted in a fair and transparent manner. In coming to such a conclusion, the circumstances that have weighed with the Committee are as under:

(i) No procedures or guidelines were prescribed by the Director for conducting the practical test or interview by the Selection Committee. Neither the procedure adopted by the

- Selection Committee at their level was approved by the Director.*
- (ii) *The Director Fisheries should have given detailed guidelines to the Selection Committee and the principles of natural justice required that the selection criteria should be made known to all the candidates in advance either in the advertisement issued or through the interview letters. However, in the instant case no such pre-determined criteria was published or made known to the candidates. The Selection Committee disclosed the marks for four different components only on the spot. But, further detailed scheme of marks was not disclosed to the candidates at any stage. The detailed scheme of marking was known only to the Selection Committee members.*
- (iii) *The permission for starting the recruitment process from Hon'ble Chief Minister was obtained by Director Fisheries through Principal Secretary and Minister of Fisheries. For cancellation of recruitment process, the Director Fisheries wrote on 27.12.2016 to the Principal Secretary, with the copy to the Minister of Fisheries. However, without awaiting the approval of competent authority, the Director cancelled the recruitment process by his orders dated 30.12.2016.*
- (iv) *Director Fisheries in its proposal submitted to the Administrative Department mentioned that the departmental Selection Committee will be headed by Director Fisheries as Chairman. The other members of the Selection Committee will be Deputy Director (Headquarter), concerned Deputy Director and District Fisheries Officers (Headquarter). The Administrative Department vide its letter dated 08.02.2016 gave approval for recruitment on the understanding that the selection will be made by the Selection Committee as per the proposal. However, the Director Fisheries vide his orders dated 27.07.2016 constituted a Selection*

Committee which was headed by Shri Vijay Kumar Sharma, Deputy Director Fisheries (Headquarter) as Chairman, which was different than what was agreed by the Administrative Department. Hence, the Director Fisheries disregarded the approval of the Administrative Department with regard to constitution of the Selection Committee.

- (v) *The officers/officials of the Department and members of the Selection Committee never informed the Department about their relatives appearing in the selection process, which is a serious misconduct.”*

6. *Having gone through the Committee’s report and the conclusion thereof, I find no irregularity committed by the competent authority in directing the cancellation of the selection which is impugned herein. Even it was open for the petitioners to challenge the said Committee’s report, but till date it has not been done by them. Therefore, no ground for interference is made out.*

7. *Be that as it may, the petitions are dismissed with liberty to the petitioners to challenge the Committee’s report, if so advised.*
xxx”

3. It is the penultimate paragraph i.e para No.7, as aforesaid, from which the petitioners seem to have got a clue to approach this Court assailing the Committee’s report. No doubt, liberty was granted to the petitioner while parting with the above mentioned judgment but the same also, in any case, did not relieve the petitioners of the obligation to explain the long delay in challenging the Committee’s report dated 25.06.2018. Absolutely no explanation is forth coming for delay. To assert that the petitioners, after an inordinate delay of 04 years, can file a fresh petition to assail the same, is not permissible. The said Committee report was available on the Court record and no steps were ever taken even to amend the earlier writ petition. For delay latches and acquiesce, the petition deserves dismissal.

4. Following are the grounds urged in the petition for challenge to the report of the inquiry Committee:-

“1) That the Director Fisheries Department Haryana was authorised to appoint selection committee and the Director has appointed the selection committee and selection committee has framed its criteria of selection and it is settled principles of law that if no criteria has been prescribed under rules or instructions then the selection committee is competent to frame the criteria of selection and it is not remotely the allegation that said selection criteria was not fair and proper. So in these circumstances the selection made on the basis of criteria framed by the selection committee does not suffer any infirmity.

2) That further averment made tghat candidates were not aware in advance what criteria shall be adopted by the selection committee. Although it is settled principles of law that it is not necessary to disclose to the candidates what criteria of selection shall be adopted. But as clear from the advertisement itself it was specifically mentioned that candidate has to submit certificate of training and knowledge of fish, regarding throwing of net and swimming etc., duly attested by the Gazetted Officer. So, as clear from criteria (p-7) the marks have been awarded for net banking, swimming, fish identification, net throwing etc. so the candidates were well aware in which field the test will be taken from the selected candidates. So, in these circumstances merely because the criteria was not informed prior to starting the process of selection does not suffer any infirmity. Although it is not disputed that a the time of starting the process of selection candidates were duly informed the criteria of selection. So, in these circumstances the said selection does not suffer any infirmity.

3) That the observation of the committee (P-14) that the Director Fisheries Haryana has cancelled the selection without approval of the Govt. vide order 30.12.2016/03.01.2017 (P-4). So, these averments are in favour of the selected candidates i.e. petitioners. So, if the director has cancelled the selection without approval of the govt. so the said action is prima facie illegal. So the petitioners also made prayer in the present writ petition for quashing the order dated 30.12.2016/03.01.2017 (P-4). So in light of the observation of the committee the impugned order (P-4) is liable to be set aside.

4) That all the members of the selection committee has filed affidavit before the committee as annexure P-9 to P-12 and by perusing the said affidavits it is clear that the said selection does not suffer any infirmity. But while submitting the report (P-14) the affidavits of the members of the selection committee were not taken into consideration at all.

So on this ground also the report (P-14) is liable to be set aside.

5) That the said committee in its report (P-14) has made no efforts at all to find out innocent and tainted candidates. it has been settled by the Hon'ble Supreme Court in case of Inderpreet Singh Kahlon vs. State of Punjab as reported in 2006 (3) SCT 25 that when selection has been made the competent authority should made all efforts to separate innocent candidates from the tainted candidates. But in the said report (P-14) no efforts have been made to find out the innocent and tainted candidates. So, the said report (P-14) is liable to be set aside on this ground alone.

6) That undisputedly the fisherman-cum-watchman was a class-iv post and whole selection process was videographed and by perusing the videography no reasonable person can reach to the conclusion that said selection suffer any infirmity. But this aspect was also not examined by the said committee in its report (P-14). So, the petitioners were rightly selected and appointed and their selection and appointment does not suffer any infirmity.

7) That selected and appointed candidates were not granted any reasonable opportunity before submitting the said report (P-14). So on this ground also the said report is liable to be set aside."

5. Having considered them with reference to the relevant part of the Committee's report Annexure P-14, extracted in the order dated 30.08.2012 reproduced above, I am of the opinion that the Committee took a wholesome, well reasoned and correct view of the matter and reached correct conclusion. Thus, on merits too, the challenge to the said report is liable to fail.

5. In the premise, no ground for interference by this Court is made out.

6. Dismissed.

NOVEMBER 23, 2022
Shalini

(ARUN MONGA)
JUDGE

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