

[290] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 12916 of 2001 (O&M)

Date of Decision :28.11.2023

Amrik Singh and others

...Petitioners

versus

The State of Punjab and others

....Respondents

Coram : Hon'ble Mr. Justice Sanjeev Prakash Sharma

Present : Mr. G.S. Bal, Senior Advocate with
Mr. Laxman Chaudhary, Advocate, for the petitioners.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Brijesh Khosla, Advocate and
Mr. Paramvir Singh, Advocate, for respondent
Nos.4 to 8, 10, 13 & 14.

SANJEEV PRAKASH SHARMA, J. (ORAL)

1. By way of this writ petition, the petitioners challenge is to the validity of the decision taken by the Cabinet to re-appoint those unsuccessful candidates on 11 posts of Block Development & Panchayat Officers, who were earlier appointed but were later on found unsuccessful in view of the selection criteria adopted in terms of the directions issued by the Supreme Court in **Praveen Singh versus State of Punjab and others** AIR 2001 SC 152.

2. Brief facts which need to be noticed are that a selection process was conducted, which was not approved by the Supreme Court in **Praveen Singh**'s case (supra) and the Supreme Court directed that marks in written examination shall also be taken into consideration for assessing overall merit. Accordingly a revised merit list was prepared and 11 candidates who had been earlier selected were ousted. New candidates, who were selected,

were offered appointment and they joined while the services of 11 respondents (respondents nos. 4 to 14) were terminated. Thereafter, 11 respondents submitted a representation to the Government alongwith opinion from Senior Advocate for allowing them to continue on the posts. The State Government took a decision to relax the rules and filled 11 additional posts available under direct recruitment quota by appointing 11 respondents as one time measure. The decision was taken on consideration that there was no fault on the part of 11 respondents and they had no role to play with regard to the method of selection conducted by the Punjab Public Service Commission, which had ultimately not found favour with the Supreme Court.

3. Learned counsel for the petitioners submits that once rule provides for filling up of posts in a particular method, the same has to be done in the method as prescribed and a different method cannot be adopted. The action of the State Government is contrary to law and the direct recruitment posts could not be offered to persons who had been declared unsuccessful in a selection process. He further submits that exercise of power of relaxation under Rule 21 of the Punjab Development and Panchayat (Class-II) Service Rules, 1974, is based on whims or caprice of the Cabinet.

4. Per contra, learned Senior Counsel appearing for private respondents has informed that except respondent no. 12, all other private respondents have retired. It is also stated that the petitioners have also advanced in service and have been further promoted as Dy.SP. and attains superannuation in 2016 and no relief can be granted to the petitioners. So far as respondent no.12 is concerned, it is stated that after having continued as

BDPO, he was selected in the Punjab Civil Service (Executive Branch),

where he is presently working.

5. The Punjab Public Service Commission has also filed its reply and pleaded that the decision taken by the Government was without consultation with the Commission.

6. Learned Senior Counsel for 11 respondents further submits that in the light of judgments of Apex Court in 'Shamsher Singh Sandhu versus Union of India and others', 2020 (1) SCT 723 and 'State of Haryana versus Subash Chander Marwaha and others', AIR 1973 SC 2216, no vested right of the petitioners can be said to have been taken away and the appointment of 11 respondents ought to be protected.

7. Learned counsel appearing for the petitioners has also relied on judgments to buttress his submission that sympathetic considerations cannot be the aspects for deciding matters and especially relating to appointments. He relies on judgments 'Ahmedabad MC versus Virender Kumar', 1997 (4) RSJ 19 (SC), 'Dr. Arundhati Ajit Paragaonar versus State of Maharashtra', AIR 1995 SC 962, 'Dr. MA Haque versus Union of India', 1993(3) RSJ 39, 'Dr. MC Bindal versus RC Singh', AIR 1989 SC 134 and 'Praveen Singh's case (supra).

8. This Court finds in 'Praveen Singh's case (supra), the appointments made by the Public Service Commission on the post of BDPOs were set aside and the Punjab Public Service Commission was directed to complete the process of selection in terms of the existing rules so that both written and viva-voce test be taken into consideration for the purpose of effecting appointments, wherein this Court held as under:-

“On the wake of the above, the order of the High Court stands set aside and quashed. Consequently, the appointments are also set aside. The Public Service Commission is directed to complete the process of selections

in terms of the existing rules so that both the written and the viva voce test be taken into consideration for the purpose of effecting appointments. It is made clear that no further advertisement or examination shall take place but reconsideration of the entire process be effected upon the reliance on the written as well as viva voce test. The process be completed within a period of 3 months from the date thereof. It is further made clear that the appointments if any, already made shall continue, but shall be subject to the further results which may be declared by the Public Service Commission in regard to filling up of the posts of Block Development and Panchayat Officers. The appeal thus stands allowed. There will however be no order as to costs.”

9. In compliance of the orders passed by the Hon’ble Supreme Court, the appointment of the respondents, who were not successful in the final merit list prepared by the PPSC were cancelled and their services were terminated on 29.06.2001. Thereafter, the State Government has considered their cases and it appears that based on some legal opinion and sympathetic considerations relating to their having resigned from their previous services and the termination effecting the service career of the respondents, the State Government has taken a decision to relax Rule 21 and appoint them afresh.

10. The course adopted by the State Government is an anathema to the principles laid down under Article 14 of the Constitution of India. A person, whose appointment was set aside by the Supreme Court, could not have been re-appointed by the Respondent-State. If any protection was required to be given to 11 respondents, the same could only be given by the Supreme Court. However, as the Supreme Court did not give them the benefit, the decision to give them appointment on additional posts, which

were not part of the advertisement, is unlawful and unjustified.

11. The course adopted by the respondent-State suffers from arbitrariness. Such a course if is allowed to prevail would result in Rule of Thumb instead of Rule of Law. It could encourage favouritism which cannot be allowed in public services. However, this Court finds that 11 respondents have continued for more than 20 years and all of them have retired, except one. Respondent no.12 has been able to achieve excellence in service and is selected in the civil service of the State Government, namely, PCS (Executive Branch). He was selected earlier on the basis of marks obtained in the interview on the post of BDPO. The Supreme Court in **Praveen Singh's** case (supra), only form the procedure of selection by interview alone as unjustified. However, it did not make any observations of arbitrariness in interview.

12. In the circumstances as aforementioned, possibility of 11 respondents being selected again if the regular selection would have been conducted for the posts by the PPSC, cannot be ruled out.

13. In view of the above, this Court following the principles as laid down by the Apex Court in **Shamsher Singh Sandhu's** case (supra) does not think it proper to disturb said appointments after a period of more than 20 years and more so as the petitioners have also retired.

14. Accordingly, the writ petition is held to have become quietus and infructuous by afflux of time.

15. All pending applications stand disposed of.

28.11.2023
Rajneesh/vs

[SANJEEV PRAKASH SHARMA]
JUDGE

<i>Whether speaking / reasoned</i>	:	Yes	/	No
<i>Whether Reportable</i>	:	Yes	/	No