

2566 (4 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2913-2013 (O&M)
Date of Decision: 11.12.2023

SUNIL KUMAR AND OTHERSPetitioners
V/s.
STATE OF PUNJAB AND OTHERSRespondents

CWP-22256-2013 (O&M)

BALJINDER SINGHPetitioner
V/s.
STATE OF PUNJAB AND OTHERSRespondents

CWP-823-2013 (O&M)

HARVINDER SINGH AND OTHERSPetitioners
V/s.
STATE OF PUNJAB AND OTHERSRespondents

CWP-8872-2013 (O&M)

GURINDER SINGHPetitioner
V/s.
STATE OF PUNJAB AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. A.K. Walia, Advocate for the petitioners
 In CWP-823-2013.

 Mr. Gunjan Mehta, Advocate for the petitioners
 In CWP-2913-2013.

 None for the petitioners
 in CWP-22256-2013 & CWP-8872-2013

 Mr. D.K. Singal, Addl. A.G., Punjab.

 Mr. Roopak Bansal, Advocate for the private respondents.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. All these Writ Petitions have been taken up together as all the

petitioners are aggrieved of their non-selection for the post of Learner Binder

for which the advertisement bearing No.5/2011 was issued by the Punjab Subordinate Services Selection Board (hereinafter referred to as “the SSB”).

2. Firstly, we will take **CWP Nos.2913, 8872 and 22256 all of 2013** which are the Writ Petitions filed by the candidates who possessed the certificate issued by the National Council for Vocational Training under the Director General of Employment in Training in the Course of Book Binder.

3. Learned counsel for the petitioners submits that the Hon’ble Supreme Court in the case of **U.P. State Road Transport Corporation Vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh** ; AIR 1995 SC 1115, held as under:-

12. *In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful of their training:-*

- (1) Other things being equal, a trained apprentice should be given preference over direct recruits.*
- (2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India. v. Hargopal, AIR 1987 SC 1227, would permit this.*
- (3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.*
- (4) The concerned training institute would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior.”*

4. Thus, he submits that a preference has to be given to those candidates who have done apprenticeship course or possessed the certificate issued by the National Council for Vocational Training in a particular filed. It is also stated that the Punjab Government Director ITIs had also adopted the circular issued by the Government of India in terms of the apex Court's judgment in the case of **U.P. State Road Transport Corporation** (Supra), recognizing the said Apprenticeship Act, 1961 and the certificate issued therein.

5. The order specifically mentions that the apprentices who have earlier completed their training shall be given priority so that the implementation of the order of the apex Court can be done. However, it is stated that advertisement No.5 of 2021 was issued for inviting applications for the post of Learner Binder with 2/3 years' Certificate of National Trade Certificate/National Apprenticeship Certificate in Binding Trade issued by the National Council for Vocational Training which was made equivalent to 4 years' experience as Binder in the Printing Press whereas no priority was given to them.

6. Learned counsel for the petitioners submits that the petitioners had participated in the selection process which consisted of a practical test. The respondents, however, declared only a list of 10 candidates who passed the said practical test without disclosing the marks which the petitioners may have obtained and all the petitioners have been, therefore, left out from selection.

7. Learned counsel for the petitioners submits that after filling up the said 10 posts as advertised, there were several posts of Learner Binder which were are available, but the petitioners were not given any opportunity for the selection on the said posts.

8. Learned counsel for the petitioners submits that in terms of the judgment of the apex Court in the case of **U.P. State Road Transport Corporation** (Supra), the petitioners were required to be considered for appointment even against the posts which have fallen vacant subsequently.

9. It is stated that the petitioners could become overage if they are not considered in terms of the Apprenticeship Act, 1961 and directions of the apex Court for appointment on the technical post of Learned Binder. Similar pleas have been taken in **CWP Nos.2913, 8872 and 22256 all of 2013.**

10. In **CWP-823-2013**, learned counsel for the petitioners has submitted that as per the advertisement and selection criteria, merit was to be prepared on the basis of the percentage of marks obtained in the Matric level examination and in the said merit, the petitioners scored higher marks than those who were selected.

11. Learned counsel for the petitioners has shown petitioner No.1-Harvinder Singh scored 62.4% marks in the merit, petitioner No.2-Surinder Pal Singh scored 51% marks and petitioner No.3-Bhupinder Singh has scored 49.6% marks in the merit.

12. Learned counsel for the petitioners submits that in the overall merit list, petitioner No.1-Harvinder Singh has, thus, higher merit than the persons who have been selected. He further submits that in the final merit list which was prepared, the candidates lesser in merit have been given

appointment and thus, petitioner No.1-Harvinder Singh ought to have been appointed, while persons who have been selected (**respondents No.7 to 11**) **are all those who** have secured lesser marks in the overall merit.

13. Learned counsel for the petitioners further submits that the Committee was constituted by the respondents for re-evaluation of the practical test on 07.11.2012 and criteria had been laid down for valuation of the practical test after the practical test was already conducted. It is stated that the practical test was conducted on 23.10.2012 while the criteria had been laid down in a meeting on 07.11.2012. Thus, pick and choose method was adopted for making selections of candidates for the posts.

14. Learned State counsel has, however, denied the submissions of the learned counsel for the petitioners and has submitted that as per the advertisement issued, the merit for the purpose of calling persons for practical test was prepared based on the Matric level examination and only those candidates who passed the practical test were called for counseling and the final selection list was prepared thereafter. Eight candidates from General category and two candidates from the Scheduled Caste category were selected finally.

15. He further submits that all the petitioners have participated in the practical test also, but were unsuccessful to come in the merit of the practical test. They could not even secure the minimum marks to qualify the practical test which was mandatory for selection and therefore, their higher merit of Matriculation examination than the selected candidates is irrelevant. In support of his submissions, he relies on the judgment passed by the

Supreme Court in the case of **Dhananjay Malik & Others** Vs. **State of Uttaranchal & Others**; 2008 AIR (SC) 1913.

16. Learned counsel appearing on behalf of the selected candidates submits that their selection does not call for any interference by this Court as they have participated in the selection and after having cleared the practical test, they have been offered appointment and the petitioners are those unsuccessful candidates who after having already participated in the selection without any demur are challenging the criteria.

17. In support of his submissions, he relies on the judgment passed by the Hon'ble Supreme Court in the case of **Ranjan Kumar** Vs. **State of Bihar and Others** ; 2014 (6) Scale 579.

18. Reliance was also placed on three judgments passed by this Court in the cases of:-

- (1) **Amarjeet Kaur** Vs. **Central Administrative Tribunal, Chandigarh Bench, Chandigarh and Others** passed in CWP-19241-201d decided on 30.10.2015;
- (2) **Puran Chand and Others** Vs. **State of Haryana and Others** passed in CWP-1046-1995 decided on 07.07.2011
- (3) **Kulmohan** Vs. **Union Territory, Chandigarh and Others** passed in CWP-9640-CAT-2004 decided on 20.02.2014.

19. I have carefully considered the submissions of the learned counsel for the parties.

20. The Advertisement No.5 of 2011 issued on 23.09.2011 reads as under:-

“Subordinate Services Selection Board, Punjab

CWP-2913-2013 (O&M), CWP-22256-2013 (O&M)
CWP-823-2013 (O&M) and CWP-8872-2013 (O&M)

Page 7 of 10

Tower No.4-5 (First Floor)
Forest Complex, Sector 68, SAS Nagar (Mohali)

PUBLIC APPOINTMENTS
Advertisement No.5 of 2011 dated: 23.09.2011

Regarding recruitment to the following posts in various departments under Punjab Govt.

For the following posts the applicants can submit their application form online from 27.02.2011 to 16.10.2011 upto 5.00 p.m. on the website of CDAC <http://recrutement.cacmohali.in/> Those candidates who apply online on 16.10.2011 can deposit their fees upto 17.10.2011. Thereafter no fees will be deposited.

1 to 10. XXXXXXXXXXXXXXXX

11. Controller Printing and Stationery Department, Punjab.

Learner Binder (Either Sex) Total Posts 10.

8 General, 2 SC. Pay Scale 5910-20200 + 1900 Grade Pay.

Educational Qualification

(a) The candidate should have passed matriculation examination with Punjabi as subject.

(b) 2/3 Years National Trade Certificate/ National Apprenticeship Certificate in Binding Trade or 4 years experience of Binding Trade in any printing press.

(c) The candidate will also have to pass practical test.

Selection Criteria:- The merit will be prepared on the basis of percentage of marks obtained in the matric level examination.

Candidates 5 times the number of available posts in each category shall be called for practical test. Only the candidates who have passed the practical test will be called for counseling.

12 to 15 XXXX×××××××

XXXX×

Prescribed Fees:

General Category: Rs. 600

SC/ST /BC: Rs. 150

Ex-servicemen and dependents: No Fee

XXXXXXXXXXXXXXXXXX

*Sd/- Secretary Subordinate
Service, Punjab, Chandigarh.”*

From the above, it is apparent that the respondents while issuing the advertisement have not taken care of guidelines laid down by the apex Court in relation to the priority to be given to the persons who have acquired certificate issued by the National Council for Vocational Training under the Director General of Employment in Training in the Course of Book Binder.

21. The State Government had also adopted and recognized the Apprenticeship Act, 1961 and it was specifically declared that the apprentices who have earlier completed their training, shall be given priority so that the implementation of the apex Court's order could be done. Directions in this regard were also issued to the various Principals of the ITIs. It, however, seems that while issuing the advertisement the SSB did not take into account the directions of the apex Court and therefore no priority was given to anyone. However, question arises that whether at this stage, this Court could interfere with the selection process.

22. It is settled law that a person who participated in the selection process without making any objections, cannot turn around after the selection process is over to challenge the criteria under which the selection process was started/conducted.

23. In view thereof, the claim of the candidate who has been unsuccessful claiming benefit of their national trade certificates/national apprenticeship certificates for being selected against the post advertised, does not find favour with this Court and on that count the selection cannot be set aside.

24. The further claim of the petitioners who possessed 4 years' experience and claimed to have higher merit as per their Matriculate examination are to be selected is also not found in conformity with the conditions of appointment. While the merit prepared for the purpose of screening and calling 5 times the number of the available posts was the percentage of marks obtained in the Matric level examination, it is the marks ultimately obtained in the practical test which were the basis for selection.

25. The respondents' reply categorically states that the petitioners did not qualify the practical test. Hence, although the petitioners have higher merit than others so far as the Matric level examination is concerned, having not cleared the practical test, their claim over and above the private respondents fails.

26. The further submission of the learned counsel for the petitioners regarding the criteria for counseling being laid down in a meeting after the practical test is concerned, this Court finds that this is a mere misconception. The selection process was to be made after the practical test. The practical test was conducted in October, 2011 and the counseling was to be done thereafter as per the advertisement.

27. The respondents in their reply have also placed on record the said aspect showing that minimum 60 marks out of 100 marks in the practical test was the eligibility for coming in the selection zone as per the decision of the Selection Committee constituted by the Chairman, SSB which has been placed on record as R-1. The said criterion is not under challenge before this Court. Thus, the same cannot be doubted for the purpose of the present selection nor can it be gone into at this stage.

28. Having noticed above, this Court finds that the relief cannot be given to the petitioners. However, this Court observes that in terms of the judgment by the apex Court in the case of **U.P. State Road Transport Corporation** (Supra), the respondents were bound to offer appointment to the petitioners who possessed the National Trade Certificate and give them priority for appointment on various posts as it has come on record that there are posts lying vacant with the respondents in the various ITIs. The respondents may consider the candidature of the petitioners for the posts which may be lying vacant and a separate drive for selection for the said posts may be conducted.

29. If such selection process is conducted, suitable age relaxation may also be given to the petitioners.

30. With the said observations, these Writ Petitions stand **disposed of.**

31. All the pending applications shall stand disposed of accordingly.

December 11, 2023
Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

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