

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

236

2023:PHHC:060692

CWP-22754-2018

Date of decision: 27.04.2023

SUSHIL KUMAR

..Petitioner

Versus

STATE OF PUNJAB AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S. Patwalia, Advocate
Mr. Akshit Pathania, Advocate
for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

ANIL KSHETARPAL, J(Oral)

1. The petitioner while filing the writ petition prays for the issuance of a writ in the nature of certiorari to quash the charge sheet issued on 29.12.2017 and departmental enquiry report dated 10.07.2018. As per the inquiry report, the charges against the petitioner are reported to have been proved.

2. In order to comprehend the controversy involved in the writ petition, the relevant facts, in brief, are required to be noticed, which are as follows:-

The petitioner was employed as IV Class employee in the Homeopathic Department. The petitioner wrote a departmental test on 26.03.2013 for the promotion to the post of Dispenser. The petitioner was declared successful in the result with other candidates and was promoted as a Dispenser on 05.04.2013. A writ petition was filed in the Court challenging irregularities in the test. However, the Government defended the writ petition while claiming that there was no irregularity. Ultimately, the writ

petition was dismissed in the year 2016. Subsequently, the petitioner was

called upon to pass the departmental promotion test afresh, which he refused. Ultimately, with the approval of the Hon'ble Chief Minister, a charge sheet has been issued to the petitioner.

3. The learned counsel representing the petitioner submits that once the State while filing the written statement in the previous writ petition has claimed that there was no irregularity in the test conducted, then, the petitioner cannot be asked to give the departmental promotion test again. He further submits that the departmental promotion test must be held qua all the candidates who had attended the test and the petitioner cannot be discriminated solely and the rules must apply evenly.

4. This Court has considered the submissions of the learned counsel representing the petitioner. It has come on record that in the aforesaid departmental promotion test, the petitioner's brother was one of the invigilators. In a departmental inquiry against his brother a decision of major punishment was passed.

5. Even a stand in a previous writ petition that there was no irregularity in the examination, would debar the State to direct the petitioner to undergo the departmental test afresh. As far as the argument of the learned counsel that the test is required to be held qua all the candidates who participated in the said test and the petitioner cannot be singled out, it may be noticed that only the brother of the petitioner was one of the invigilators, same is not the situation of other candidates.

6. The learned counsel representing the petitioner submits that there is no allegation on the petitioner's brother that he helped him in the test.

7. On the other hand, the learned counsel representing the State of Punjab submits that the petitioner's brother never informed the government that his real brother is also taking the exam. Once, there is some apprehension of the fairness of the departmental test qua the petitioner, the State is not estopped from directing the candidate(s) to again write the exam.

8. Keeping in view the facts and discussion, no ground to issue the writ as prayed for, is made out.

9. Dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

April 27th, 2023

Ay

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*