

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 34912 of 2019

Reserved On: 03.05.2023
Pronounced On: 03.07.2023

Kuljit Singh and Another

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Raktim Gogoi, Advocate
for the petitioner(s).

Mr. R.S.Pandher, Senior Deputy Advocate General,
Punjab, for the respondent No.1 to 4.

Anil Kshetarpal, J.

1. At the outset, it is important to note that though this writ petition was filed by two petitioners, however, the writ petition qua petitioner No.2 was dismissed as not pressed on 11.01.2021. Hence, the writ petition survives only qua petitioner No.1.

2. While filing the writ petition, the petitioner prays for the following substantive reliefs:-

“i) writ of certiorari quashing impugned order dated 08.11.2019 (Annexure P-29);

ii) writ of certiorari quashing impugned order dated 03.08.2018 (Annexure P-13) whereby the necessary sanction for the appointment has been declined;

iii) writ of certiorari quashing order dated 30.01.2019

Civil Writ Petition No. 34912 of 2019

(Annexure P-17) passed by Ld. Educational Tribunal, Punjab in terms of order dated 24.01.2019 (Annexure P-16) dismissing the petition;

iv) a writ of certiorari quashing order dated 25.04.2018 (Annexure P-24) said to have been issued on 24.05.2018 and further said to have been issued to respondent No. 5 on 25.06.2018 (Annexure P-24) whereby the appointment of Headmaster and Clerk was scrapped;

v) writ of certiorari quashing order dated 17.07.2019 and 22.07.2019 (Annexure P-21 and P-22) respectively whereby the petitioners have been ordered to be relieved.”

3. The relevant facts, in brief, are required to be noticed in order to comprehend the controversy involved. The Managing Committee of the Arya High School, Mandi Phool, Bhatinda, issued the recruitment notice in the newspaper, namely “The Times of India” on 08.12.2017 inviting the applications for the posts of the Headmaster and Clerk in the school against the grant-in-aid post. Pursuant thereto, the petitioner and about 15 others applied for the post of Headmaster. The petitioner No.1 was selected and issued the appointment letter on 11.12.2017. On the next day i.e. 12.12.2017, the petitioner joined. The school forwarded the matter to the competent authority i.e. Director, Public Instructions, Punjab, for the grant of approval/sanction to the appointment of the petitioner. The matter remained pending with the Director, Education Department, Punjab. However, on 03.08.2018, the Director refused to grant approval on the ground that the recruitment notice was not published in accordance with the Rule 7 of the

Punjab Privately Managed Recognized School Employees (Security of Service) Rules, 1981 (hereinafter referred to as “the 1981 Rules”), as the recruitment notice is also required to be published in the Punjabi Newspaper. On coming to know of the aforesaid objection, the management of the school sought exemption on the ground that the recruitment notice was sent for publication in two newspapers, however, it was inadvertently not published in the Punjabi Newspaper and hence, such condition should be relaxed. On coming to know of the order passed on 03.08.2018, the petitioner filed Civil Writ Petition No. 26068 of 2018 which was withdrawn vide order dated 12.10.2018. The respondent No.5 also preferred a petition before the Punjab State Educational Tribunal, Mohali, seeking a direction to relax the condition of publishing the recruitment notice in the vernacular newspaper in view of the facts and circumstances of the case. The same was disposed of on 24.01.2019 by directing the official respondents to consider the matter as the error is of a technical nature. The petitioner also filed a petition in the Punjab State Educational Tribunal, Mohali, seeking the relief of setting aside the order dated 03.08.2018 while directing the official respondents to relax the condition which was also disposed of on 30.01.2019 in terms of the order dated 24.01.2019. However, the official respondents failed to take the decision forcing the petitioner to file the Civil Writ Petition No. 8823 of 2019 which was again allowed to be withdrawn with the liberty to pursue the case with the official respondents. In order to remove the technical objection, the management of the school got published a notice on 20.04.2019 in the Punjabi Newspaper, namely “The Sewak” but no candidate came forward to apply. On 17.07.2019, the direction was

issued to relieve the petitioner in case he marked his presence in the attendance register. Once again, the petitioner filed a petition in the Punjab State Educational Tribunal, Mohali, which was disposed of as not maintainable on 18.09.2019. Once again, on 25.04.2019, the direction was issued to relieve the petitioner. Once again, the petitioner filed the Civil Writ Petition No. 29081 of 2019 for setting aside the order dated 03.08.2018 which remained pending. On 08.11.2019, the Director passed the detailed order refusing to grant relaxation/exemption. Challenging all these orders, the present writ petition was filed. The petitioner has withdrawn the Civil Writ Petition No. 29081 of 2019 with the liberty to pursue the present writ petition.

4. On the notice issued, a detailed reply by way of an affidavit of the Deputy Education Officer (Secondary Education) has been filed. In substance, it is claimed that there is an infringement of Rule 7 of the 1981 Rules, hence, the approval cannot be granted. With regard to the subsequent recruitment notice published by the management on 20.04.2019 the official respondents have not disputed the same, however, submit that such publication does not validate the action of the respondent no.5 which is patently against the Rule 7 of the 1981 Rules.

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book as well as their written arguments.

6. At this stage, it would be appropriate to reproduce the Rule 7 of the 1981 Rules, which reads as under:-

“7. Appointing authority and method of appointment.- (1)

All appointments to the aided posts shall be made by the managing committee in the following manner:-

(i) Appointing authority shall advertise in both English and vernacular daily newspapers in the State, vacancy or vacancies to be filled in by giving full particulars thereof including the requisite qualifications, number of vacancies to be filled in and the last date by which the applications may be submitted;

(ii) the recommendations for appointment of the candidates shall be made by a sub-committee consisting of five members of the managing committee.

(2) The members of the sub-committee shall be appointed by the managing committee.”

7. It is evident that Rule 7(1)(i) of the 1981 Rules requires the appointing authority to advertise in the English and vernacular daily newspapers in the State by giving full particulars of the vacancies including the requisite qualification, number of vacancies to be filled in and the last date by which the applications are to be submitted. Undoubtedly, there is an infringement in the aforesaid rules.

8. In this situation, the question which requires adjudication is as to “whether the Court is required to ignore the technical infringement of the rules of procedure which causes prejudice to none in order to advance the cause of justice?”

9. In the present case, it is undisputed that for the post of Headmaster, approximately 16 applications were received. It is also not disputed that there is violation of the procedure laid down for the issuance of the recruitment notice to invite the applications for appointment on account of the bonafide error. It is not the case of the official respondents that management of the school intentionally did not publish the recruitment notice in vernacular newspaper. Moreover, such an error is sought to be rectified by publishing the subsequent recruitment notice in the Punjabi Newspaper on 20.04.2019 in continuation of the previous recruitment notice, but no application has been received. The petitioner No.1 is working since the month of December, 2017 as the Headmaster of the respondent No.5-School and till date no one has come to the school or the department claiming deprivation of an opportunity on account of failure to publish the recruitment notice in the newspaper. Moreover, the recruitment notice was published in the newspaper "The Times of India" which has sufficient circulation in the State of Punjab. The post which has been advertised is the Headmaster and the interested candidates are expected to be well versed with the English language. Thus, it is evident that neither no one has suffered prejudice nor the failure of the respondent No.5 is the result of malafide intention.

10. A reading of the Rule 7 of the 1981 Rules, it is evident that the requirement to publish the recruitment notice in two newspapers, one in English language and second in vernacular is mandatory. In such circumstances, the question posed in the previous paragraph arises.

Ultimately, under Rule 7 of the 1981 Rules, the requirement to publish the

recruitment notice in two newspapers is a rule of procedure for inviting the applications. In the considered opinion of this Court, failure to publish the recruitment notice in vernacular was an irregularity but not illegality which goes to the root of the case. In any case, the said error was rectified while publishing the recruitment notice in the vernacular newspaper on 20.04.2019. Justice V.R.Krishna Iyer in the *State of Punjab and Another v. Shamlal Murari and Another* (1976)1 SCC 719 while speaking for the Bench with respect to the processual law, held as under:

“8. It is obvious that even taking a stern view, every minor detail in Rule 3 cannot carry a compulsory or imperative import. After all, what is required for the Judges to dispose of the appeal is the memorandum of appeal plus the judgment and the paper book. Three copies would certainly be a great advantage, but what is the core of the matter is not the number but the presence, and the over-emphasis laid by the Court on three copies is, we think, mistaken. Perhaps, the rule requires three copies and failure to comply therewith may be an irregularity. Had no copy been furnished of any one of the three items, the result might have been different. In the present case, copies of all the three documents prescribed, have been furnished but not three copies of each. This omission or default is only a breach which can be characterised as an irregularity to be corrected by condonation on application by the party fulfilling the condition within a time allowed by the Court. We must always remember that processual law is not to be a tyrant

Civil Writ Petition No. 34912 of 2019

but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand-maid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, Courts are to do justice, not to wreck this end product on technicalities. Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time. Be that as it may, and ignoring for a moment the exploration of the true office of procedural conditions, we have no doubt that what is of the essence of Rule 3 is not that three copies should be furnished, but that copies of all the three important documents referred to in that rule shall be produced. We further feel that the Court should, if it thinks it necessitous, exercise its discretion and grant further time for formal compliance with the rule if the copies fall short of the requisite number. In this view and to the extent indicated, we overrule the decision in Bikram Dass's case AIR 1975 Punjab and Haryana 1 (FB)."

11 The State has also contested the writ petition on the ground that the various writ petitions have been filed by the petitioners. It is evident that

Civil Writ Petition No. 34912 of 2019

none of the previous writ petition was filed to challenge the order dated 08.11.2019. In fact, the only writ petition filed by the petitioner to assail the correctness of the order dated 03.08.2018 in Civil Writ Petition 29081 of 2019 was permitted to be withdrawn with the liberty to pursue the present writ petition. Hence, the objection with regard to filing of the various writ petition has no substance, therefore, the same is rejected.

12. Keeping in view the aforesaid declaration of law, this Court, in the peculiar facts of the case, considers it appropriate to declare that the substantive requirement of Rule 7 of the 1981 Rules has been made good by publishing the subsequent notice on 20.04.2019 in the vernacular newspaper. Hence, at this stage, hyper-technical view as concluded by the Director in the order dated 08.11.2011 will not advance the cause of justice. Consequently, the present writ petition is allowed and the order dated 08.11.2011 is set aside while issuing the directions to the official respondents to grant sanction for appointment of the petitioner No.1 forthwith.

(Anil Kshetarpal)
Judge

July 03, 2023
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No