

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-29918 of 2022 (O&M)
and other connected cases
Date of decision: 10.01.2023

Kuljit Singh and another

..Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Yagyadeep, Advocate
for the petitioners (in CWP-29918 of 2022, 81 and 380 of 2023)

Mr. Pankaj Garg, Advocate,
for the petitioner (in CWP-30077 of 2022)

Mr. Charanpreet Singh, AAG, Punjab

ANIL KSHETARPAL, J(Oral)

1. These four connected Civil Writ Petitions No.29918, 30077 of 2022 and 81 and 380 of 2023 have come up for hearing.

2. The petitioners, in the various writ petitions, pray for the issuance of a writ in the nature of certiorari to quash the recruitment notice dated 10.11.2022 and a circular of the even date. In substance, the dispute that arises for adjudication is that, "Whether the employees of the Boards and Corporations of the State of Punjab are entitled to participate in the selection and recruitment of Punjab Civil Services (Executive Branch) from Register-C as provided in Rule 8 of the Punjab Civil Services (Executive Branch) Rules, 1976(hereinafter referred to as 'the 1976 Rules')?. The amended sub-rule (5) of Rule 8 of the 1976 rules reads as under:-

"(5) Register-C in which shall be entered the names of persons accepted as candidates from amongst officers or

officials of Group 'A; and Group 'B' serving in connection with the affairs of State of Punjab and holding posts not below the level of Senior Assistant and who are not covered by any of the categories of officers or officials hereinbefore mentioned in this rule.”

3. On the one hand, the learned counsel representing the petitioners contends that the service rules notified by the State Governments are applicable to the employees of the Boards, Companies and Corporations located and functioning in the State of Punjab and therefore, the petitioners shall be deemed to be serving in connection with the affairs of the State of Punjab. It is further contended that the Punjab State Civil Supplies Corporation, Punjab Mandi Board, PUNSUP, PSPCL/PSTCL falls within the scope of the expression “State” as defined in Article 12 of the Constitution of India. He also refers to the definition of “State Government Employees” under Rule 1.8 of the 1953 Rules. The relevant part of Rule 1.8 is extracted as under:-

“The expression 'State Government employees' means all persons whose conditions of service may be regulated by rules made by the Governor of Punjab under the proviso to Article 309 of the Constitution.”

4. On the other hand, the learned counsel representing the State of Punjab submits that from the very beginning, the employees of Boards and Corporations are not considered as the public servants and they have never been allowed to participate in the aforesaid selection.

5. Before proceeding further in the matter, it is pertinent to note that the selection/appointment/nomination to the Punjab Civil Service

(Executive Branch) is regulated by the Punjab Civil Services (Executive Branch) (Class-I) Rules, 1976. It provides for the recruitment from various sources including the officials mentioned for recruitment in Register A-I, A-II, A-III, Register 'C' as well as by the direct recruitment.

6. The recruitment of employees through Register 'C' is only open to candidates who are working as the officers/officials of Group 'A' and Group-'B', serving in connection with the affairs of the State of Punjab and holding posts not below the rank of a senior assistant, who are not covered by any other category of officers/officials mentioned in Register A-I to Register 'B'.

7. With regard to the aforesaid facts, the above mentioned question as culled arises for adjudication.

8. The employees of the Corporation and Board are not considered public servants in the eyes of law. They are not entitled to protection under Article 311 of the Constitution of India. Moreover, these Boards and Corporations are autonomous bodies which are mostly headed by the Government officers, who are deputed by the concerned State Government. Even if the Corporation adopts the service rules applicable to the employees of the State, still the employees of the Corporation are not covered under the umbrella of the expression 'Public Servants'. The expression “in connection with the affairs of State” is required to be interpreted in relation to performing the sovereign functions of the State.

9. In a recent judgment passed in **Delhi Subordinate Services Selection Board and another vs. Seema Kapoor (Civil Appeal No.4461 of 2021, decided on 22.07.2021)**, the Supreme Court held that an employee of the Municipal Corporation was not considered as a 'Departmental Candidate'

for the grant of benefit of age relaxation. The Supreme Court, while reversing the judgment passed by the Central Administrative Tribunal (CAT) as well as the High Court, observed as under:-

“8. We have heard learned counsel for the parties and find that the order passed by the Central Administrative Tribunal and that of the High Court are not sustainable. Firstly, the High Court has quoted a wrong provision in the order passed relating to subsequent advertisement. Secondly, the benefit of age relaxation is permissible for government servants and departmental candidates. It is not even the stand of the respondent that she is a government servant and, rightly so, as she is employed in an autonomous body i.e. Municipal Corporation established under a specific statute. The expression ‘Departmental Candidates’ is in respect of the candidates who are working in the concerned Department i.e. Education. The Circular of the Government of India dated 27.3.2012 has made it explicitly clear that the benefit of age relaxation is only meant for civil employees of the Central Government and not to the employees of the autonomous bodies, public sector undertakings etc. Therefore, the respondent, as an employee of the autonomous body, i.e. the Corporation, is not entitled to age relaxation either as a departmental candidate or as a government servant.”

10. In fact, the argument of the learned counsel representing the petitioners is no longer *res integra* in view of the judgment passed by the Division Bench in **Kanwalpreet Singh Sidhu and others vs. State of Punjab and others (2017) 3 Service Cases Today, 454.** The Division Bench in para 23, 24, 25, 26, 27 has comprehensively answered the arguments of the learned counsel representing the petitioner which are extracted as under:-

“[23]. From the scheme of the Rules including Rule 1.8 reproduced above and the validity of which is not under challenge, it is seen that the expression ‘State Government employees’ is referable to those persons only whose conditions of service are regulated by the Rules framed by Governor of Punjab under proviso to Article 309 of the Constitution. Under Article 309, Legislature is empowered to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. In the absence of such legislative enactment, the Governor of the State is competent to make the Rules regulating the recruitment and conditions of service of the above-stated category of persons. It is, thus, essential that the Rules formulated under proviso to Article 309 must be in relation to the conditions of service of the persons who have been appointed to public services and posts “in connection with the affairs of the State”. ‘Public Services’ and ‘Posts’ or ‘affairs of the State’ are well defined connotations which refer to such civil or public posts, the holder whereof also gets protection under Article 311 of the Constitution.

[24] The expression 'serving in connection with the affairs of the State of Punjab' contained in sub-Rule (1) of Rule 15 necessarily means to those persons only who are serving under the State Government. A person can be said to be serving under the Government and in connection with the affairs of a State when his conditions of service are governed under the Rules framed under Proviso to Article 309 of the Constitution. In The State of Assam and others vs Kanak Chandra Dutta, AIR 1967 SC 884, the Hon'ble Supreme Court held that ".....A person holding a post under the State was a person serving or employed in a State and under its administrative control. There was a relationship of Master and servant between the State and the person said to be holding a post under it....." Since conditions of service of the petitioners in PSPCL are admittedly not regulated by any such Rules and there is no relationship of master and servant between such employees and the State of Punjab, they cannot claim themselves to be the persons serving under the State of Punjab.

[25] Similarly, the expression 'serving in connection with the affairs of the State of Punjab' necessarily means assignment of the duties in furtherance of the constitutional obligations and responsibilities of a State and which cannot be entrusted to private entities. The sale and supply of electricity power is no longer an exclusive domain of the State though the State may at any time enter into commercial or business ventures and compete with private entities in larger public interest.

[26] The question whether the employees of Statutory Boards/Corporations hold civil post under the Union or State can be effectively answered keeping in view the

following parameters laid down in one or the other binding precedent:-

(a) A Corporation/Board has its own separate and independent existence and is a different entity from the State, with its own property and fund;

[b] It makes little difference if the State holds majority shares of the Corporation and controls its administration by Policy directive or otherwise;

(c) It also makes hardly any difference if the Corporation adopts or copies the State Service Rules to govern conditions of service of its employees;

(d) Although the ownership, control and management of the Corporation/Board may, in fact, be vested in the State, yet in the eyes of law the Corporation/Board is its own master and is a separate entity and its employees, therefore, do not hold a civil post under the State.

(e) The only exception can be where the power to create or abolish a post in the Board/Corporation entirely vests in the State and the State pays the holder of such post out of its own funds, that the incumbent of the said post can claim to be the holder of a civil post under the State. Applying these principles to the facts and circumstances of the case in hand, none of the petitioners can be said to be serving under the State.

[27] The petitioners cannot claim parity with the employees of Punjab Vidhan Sabha or High Court as both the Institutions are creation of the Constitution. So long as their administrative heads have agreed to the

applicability of Punjab Civil Services Rules for the purpose of regulating the conditions of service of their employees, the State is right in urging that the employees of these two organs would fall within the expression of 'State Government Employees' and thus eligible for recruitment to PCS(EB) under 'Register -C'.

Rule 11 sub-rule (5):-

“(5) The list of eligible persons submitted under sub-rule (4), along with the service records of the candidates, shall be forwarded by the Government to the Commission. The Commission shall make selection on merit-cum-seniority basis by adopting a procedure similar to that being followed by the Union Public Service Commission for the elevation of offers of State Service to All India Services by associating two representatives of the State Government one serving as Secretary, Personnel and General Administration and the other senior IAS officer nominated by the Chief Secretary to Government of Punjab:

Provided that the members of the Commission and representatives of the State Government involved in the selection shall certify in respect of each candidates that they have no relation with him.”

11. It may be noted here that there is no relationship of master and servant between the Government and the employees in question. They are the employees of legal entities/autonomous bodies which are a separate entity from the State. In fact, they are the employees of the autonomous bodies and not the State Government. A company incorporated under the Companies Act including a Government company, whose management is responsible and accountable to the Government of India or the State Government, does not in any way imply that the employees of the company are holding the civil posts under the Central or State Government. A statutory authority, being a distinct juristic entity, is separate from the State.

An employee of a statutory authority cannot be held to be holding a civil

post under the State. A Statutory Corporation, exercising its statutory powers, may be covered under the ambit of the expression 'State' under Article 12 of the Indian Constitution for the purpose of enforcing Part-III of the Constitution, however, it does not lead to the conclusion that its employees hold a civil post under the Union or the State Government. The statutory corporations or the Government companies under the Companies Act may be the instrumentalities of the State and they come under the scope of the expression "other authorities" in Article 12 of the Constitution of India that defines the expression "State", but that inclusion is made only for the purpose of protecting the fundamental right guaranteed under Part-III of the Constitution. The statutory authorities have their own distinct legal personality from the Government. Hence, the employees of such bodies are not recognized as the employees of the Government and they do not fall within the expression "civil servant" so as to avail the protection provided within the provisions of Article 310 and 311 of the Constitution of India, which are primarily meant for the Government servants. In fact, the Supreme Court in **State of Mysore vs. H.Papanna Gaura and another 1970 SCC (3) 545** held that an employee holding a civil post cannot be forcibly shifted to a university which is an autonomous body. The Court, after drawing a distinction between the expression "civil post" and "employee of the university" held that a civil servant cannot be transferred to a University against his wish.

12. Learned counsel representing the petitioner relies upon the judgments passed in **Sukhvinder Singh vs. State of Punjab 2013 (4) Service cases Today 574** and **Union Public Service Commission vs. Dr. Jaidev**

Vig, 1998 (4) SCT 275. In **Sukhvinder Singh's case (supra)**, the Court was considering the question of reasonable classification while granting relaxation in age. The relaxation in age which was available to the State Government employees was not extended to the employees of the Corporations/Boards/Public Sector Undertakings. The Division Bench while relying upon the judgment passed in **Dr. Jaidev Vig (supra)** held that such kind of provision does not meet the requirements of reasonable qualification that meets the standard of 'intelligible differentia'. Similarly, in **Dr. Jaivdev vig (supra)**, the Court was considering the validity of the action of Union Public Service Commission in granting benefit of relaxation of age to the employees working in the Government Hospitals and denying it to the members of the faculty of the Post Graduate Institute of Medical Education and Research, Chandigarh. However, both the judgments lay counter observations to the view held in a recent Supreme Court judgment passed in **Seema Kapoor (supra)**. Hence, in view of the recent Supreme Court judgment, it will not be appropriate to follow the Division Bench Judgments.

13. Keeping in view the aforesaid facts and discussion, finding no merit, the writ petitions are dismissed.

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

January 10, 2023

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(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*