



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1526 of 2000 (O&M)
Reserved on: 04.09.2024
Pronounced on: 17.09.2024

Dial Singh and another
.....Petitioners

Versus

State of Punjab and others
.....Respondents

CWP-4742 of 2001 (O&M)

Dharam Pal and others
.....Petitioners

Versus

State of Punjab and others
.....Respondents

CWP-3506 of 1999

Ms. Jaswinder Kaur
.....Petitioner

Versus

State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Sunil Chadha, Senior Advocate, with
Ms. Devyani Sharma, Advocate, and
Ms. Taanvi Dhull, Advocate,
for the petitioner(s) in CWP-1526 of 2000 and
CWP-4742 of 2001.

Mr. Surya Kumar, AAG, Punjab.

Mr. P.S. Bajwa, Advocate,
for the respondent-Bank.

Mr. B.S. Patwalia, Advocate, and
Mr. Abhishek Masih, Advocate,
for respondent No.102 in CWP-4742 of 2001.

**NAMIT KUMAR, J.**

1. By this common order, aforementioned three writ petitions are being disposed of as common questions of law and facts are involved therein. For the sake of brevity, detailed facts are being taken from CWP-1526 of 2000 titled 'Dial Singh and another v. State of Punjab and others'.

2. The instant writ petition has been filed by the petitioners under Articles 226/227 of the Constitution of India for seeking a writ of *certiorari* quashing the selection to the posts of Peons made by respondent No.2-Punjab State Cooperative Agriculture Development Bank Ltd., Chandigarh (hereinafter referred to as 'the Bank') in September, 1998, and for issuance of directions to respondents No.1 and 2 to consider the case of the petitioners for appointment to the posts of Peons.

3. Brief facts, as have been pleaded in the present petition, are that respondent No.2-Bank issued advertisement in the Punjabi Tribune dated 28.08.1994 for filling up, besides other posts, 26 posts of Peons, which were subsequently revised from time to time and last advertisement was issued in Indian Express dated 08.04.1998 by which 126 posts of Peons were advertised. Out of total 126 posts, 76 were for general category; 42 for Scheduled Castes and 8 for Backward Classes. The essential qualification as advertised was that the candidate should be able to read and write and the minimum and maximum age limit prescribed was 18 to 45 years, respectively as on 30.04.1998 and the reservation shall be as per the Government instructions/rules. It may be



noticed that the name of petitioner No.1-Rajesh Kumar, was ordered to be deleted from the array of parties vide order dated 20.11.2014 passed by this Court in CM No.13905-CWP of 2014 moved by him, as he has been offered appointment to the post of Sweeper on compassionate ground in place of his mother. Petitioner No.2 has passed 8th Class from Government Inter College, Sirai, Tehri Garhwal, and thereafter passed matriculation examination from Punjab School Education Board, Mohali, in the year 1987 and petitioner No.3 is a graduate who acquired the said degree from Kurukshetra University in the year 1985 and also belongs to physically handicapped category as he suffered from permanent disability of 25%. The petitioners being fully eligible applied for the post of Peon and were called for interview by the respondent-Bank. They were interviewed by the selection committee of the Bank in the months of May/June/August, 1998 and also produced the original certificates. Thereafter, they came to know that respondents had issued appointment letters to some candidates who were less qualified than the petitioners. The select list was neither displayed on the notice board nor published in the leading newspapers, therefore, the petitioners submitted representations dated 09.07.1999 and 10.07.1999, followed by legal notices dated 09.08.1999 and 10.08.1999. In reply to the legal notices, respondent No.2, vide letters dated 14.09.1999 and 15.09.1999 informed that the selected candidates were appointed about an year ago and they have joined their services in the Bank and names of the petitioners did not appear in the select list.

It has also been alleged that although only 126 posts of Peons were



advertised, however, 200 candidates had been selected and some of the selected candidates do not possess the prescribed educational qualification and unfair means have been adopted in the selection of candidates by the selection committee of the Bank and a news-item in this regard appeared in the Punjabi Tribune dated 06.10.1998. The petitioners had earlier filed CWP No.14798 of 1999, challenging the selection made by the respondent-Bank to the posts of Peons, which was disposed of by a Division Bench of this Court, vide order dated 15.10.1999, with a direction to the respondent-Bank to supply a list of selected candidates to the petitioners and in compliance thereto, petitioners were supplied list of selected candidates for the posts of Peons vide letter dated 01.12.1999. The selection of respondents No.3 to 126 has been challenged *inter alia* on the grounds that merit list of the selected candidates was not displayed on the notice board nor the same was published in the newspapers. More than 20% of the total marks could not be allotted for interview as per the verdicts of the Hon'ble Supreme Court. The petitioners being matriculate/graduate were at a better footing, as the prescribed qualification of being able to read and write was advertised. The reservation policy of the State Government has not been followed while selecting/appointing the candidates and the criteria adopted by the selection committee has not been disclosed.

4. CWP No.4742 of 2001 has been filed by three petitioners impugning the selection of respondents No.3 to 127 by stating that petitioners No.1 and 2 belong to general category and petitioner No.3



belongs to Scheduled Castes category. Petitioner No.1 passed matriculation from Himachal Pradesh Board of School Education in the year 1984 and likewise he also passed +2 from Punjab School Education Board in March, 1995. The selection of the private respondents has been challenged on similar grounds as in CWP No.1526 of 2000.

5. CWP No.3506 of 1999 has been filed by the sole petitioner impugning the selection of respondents No.3 to 9, who are women candidates and have been selected as Peons in respondent No.2-Bank. It has been averred that the petitioner has passed Higher Secondary Part-I examination held in the month of March, 1977 in second division and thereafter has passed B.A. examination from Punjab University in the year 1981 and belongs to general category. The selection has been challenged mainly on the ground that the petitioner is graduate and whereas the selected candidates, especially belonging to general category are either middle or matriculate and as per the instructions of the State Government dated 30.12.1996 (Annexure P-12), 30% posts of Peons were to be filled from women candidates and whereas Bank has violated the said instructions as the required number of posts has not been filled from the women candidates and only seven women candidates have been selected and appointed as Peons.

6. Separate written statements have been filed in all the writ petitions. In the written statement filed in CWP-1526 of 2000, it has been stated that the petitioners participated in the process of selection



for appointment as Peons in pursuance to the advertisement dated 08.04.1998 and they remained unsuccessful in the selection process, therefore, they have no *locus standi* to assail the selection process and are stopped by their own act and conduct and acquiescence from assailing the same. It has further been stated that adequate quota in respect of reserved posts had been given. As per advertisement, 126 posts of Peons were advertised. Out of these, 76 posts were meant for general category; 42 for Scheduled Castes and 08 for Backward Classes category and in this manner due representation to the posts of Scheduled Castes and Backward Classes category has been given. In so far as physically handicapped persons are concerned, three persons have been appointed from amongst the physically handicapped persons. It has also been stated that the vacancies which occurred after the issuance of advertisement dated 08.04.1998, have also been filled up and in this way total 167 vacancies have been filled, out of which 87 posts have been filled up from general category and the representation given to the reserved categories is as follows: -

<i>Scheduled Castes</i>	=	56
<i>Scheduled Tribes</i>	=	1
<i>Backward Classes</i>	=	19
<i>O.B.C.</i>	=	1
<i>Physically Handicapped</i>	=	3

7. Two persons against the posts of physically handicapped quota have also been appointed in terms of subsequent advertisement dated 14.08.2000.



8. In para 9 of the written statement, it has been categorically stated that the list of selected candidates was duly displayed on the notice board of the Bank and the selection was made on merits. Names of the petitioners did not figure in the select list. After the issuance of advertisement dated 08.04.1998, 41 more posts became vacant in the Bank. There was a clause in the advertisement that the number of vacancies was liable to variation and in these circumstances, total 167 candidates were selected and appointed. The following averments have been made in the written statement with regard to the excess appointments made beyond the advertised posts: -

“14.....In fact, 167 candidates have been selected and appointed against vacancies, which were available with the Bank. The advertisement for 126 posts was issued on 8.4.1998. The selection process was carried out during the months of June/July and August 1998. The appointments after selection were made in September 1998. After the issuance of Advertisement on 8.4.1998, 41 posts more became vacant in the answering respondent Bank. It is submitted that the advertisement Annexure P.4 indicated only a tentative list. Besides, the advertisement contained a rider that the number of vacancies was liable to variation. The said rider facilitates filling up of vacancies by direct recruitment in good time and reduces the scope for adhoc appointments pending regular recruitment. Any appointments in excess of the number of vacancies advertised cannot be said to be arbitrary. It is submitted in the very to nature of functioning of the Bank, it is very difficult for it to assess the exact number of anticipated vacancies before issuing an Advertisement and inviting applications from eligible candidates. Therefore, the



Advertisement issued by the answering respondent Bank in effect indicated only a tentative number of vacancies which were with the rider that the number of vacancies was liable to variation. Therefore, the increase in vacancies is absolutely in consonance with the rider of variation in the vacancies. It is submitted that unlike promotions which can be made at a short duration of convening a meeting of the in-house Departmental Promotion Committee for considering the cases of in-service candidates, direct recruitment from the open market through Advertisement takes a long time. In the present case, the process of selection of Peons involved the ascertaining as to whether the candidate could read and write followed by viva voce by the Departmental Selection Committee. In case the selection process is delayed, then against the vacant posts, adhoc appointments are made subject to replacement by direct recruits as and when the recruitments take place in accordance with the rules. The Hon'ble Courts have condemned adhoc appointments. If the adhoc appointees last long, the issue of regularisation comes up leading to litigation. Therefore, it is in public interest that when vacancies arise, the candidates who have undergone the selection process and are eligible and on merit are appointed against those vacant posts. As such, no fault can be found with the making of selections beyond advertised posts when vacancies became available subsequent to the Advertisement and the Advertisement itself provided a rider for variation in the vacancies.”

9. With regard to the criteria, which has been followed by the selection committee, it has been averred as under: -

“16. That in reply to para No. 16, it is submitted that as per Advertisement, it is required that a candidate seeking



appointment to the post of Peon should be able to read and write. It is, however, submitted that a person possessing higher academic qualifications like Graduation etc. in the very nature of work is normally not fit or suitable to be appointed a Peon. A due criteria was drawn up and adopted for selecting the candidates for the post of Peon. The answering respondent Bank formulated a criteria for making selections. The requirement as per the criteria was published in the daily Newspaper 'Ajit' dated 21.5.1998. The said advertisement clearly provided that the Bank has prepared a criteria for filling up the posts of Peons and that marks have been kept for Turnout & Dress, Personality Behaviour & Manner's, General Aptitude, Interview, Rural Area, Educational Qualifications Eighth & Above, Experience and Reading & Writing. Copy of the advertisement published in the Newspaper 'Ajit' dated 21.5.1998 is attached as Annexure R.2/2.

Besides, the members of the Selection Committees were asked to assess the candidates on the basis of the said criteria. A proforma for this purpose was given to the members for assessing each candidate in a uniform manner. The marks provided for the above said considerations as indicated in the Advertisement Annexure R.2/2 were to be assigned by the members of the Selection Committees on the basis of the assessment. The proforma given to the members of the Selection Committees is attached as Annexure R.2/3.

It is submitted that in the very nature of the selection process, the criteria is not liable to be disclosed and is to be kept secret. Therefore, the selections were made on the basis of a uniform fixed criteria in a fair and impartial manner without any favouritism or any kind of influence. The petitioners themselves participated in the



selection process fully aware of the criteria as the same was duly published in terms of the advertisement Annexure R.2/2.”

10. Since selection/appointments relate to the year 1998, therefore, this Court had sought present status of the private respondents from the Bank vide order dated 12.07.2024. In pursuance thereto, an affidavit of Sh. Preet Mohinder Singh, General Manager (ADMIN) on behalf of respondent No.2-Bank has been filed, wherein it has been stated that out of selected/appointed candidates, 48 persons have either retired from service or have been dismissed or have passed away during the pendency of the present petition and the persons who are in service have also completed 26 years of service. The persons who have retired from service were further promoted from the post of Peon to various posts upto the post of Assistant Manager.

11. During the course of hearing, a preliminary objection has been raised by the learned counsel for the respondents that the present writ petition is not maintainable against the respondent-Bank as it is not a State within the meaning of Article 12 of the Constitution of India. They have placed reliance upon the judgment of the Hon'ble Supreme Court in ***S.S. Rana v. Registrar, Co-operative Societies and another, 2006(2) S.C.T. 570*** and ***order dated 31.05.2016*** passed by a Co-ordinate Bench of this Court in ***CWP No.352 of 2015 – Sham Lal v. The Punjab State Cooperative Bank Ltd. and others*** and other connected petitions, wherein while relying upon the judgment of the Hon'ble Supreme Court in ***S.S. Rana's*** case (supra), it has been held that the writ petition against the bank is not maintainable. To



controvert the said contention of the learned counsel for the respondents, learned Senior counsel for the petitioners has relied upon the judgment of a Co-ordinate Bench of this Court in ***Krishan Kant v. Punjab State Cooperative Agricultural Development Bank Limited and others, 2023(2) PLR 178.***

12. I have heard learned counsel for the parties and perused the record.

13. Since the issue about the constitution of respondent-Bank and the control of the State Government has neither been addressed nor any material facts/documents have been placed on record by either of the parties, therefore, the question with regard to maintainability of the writ petitions is not being answered and is left open to be decided in an appropriate case. However, since a long period of 26 years has elapsed from the date of the selection which was made in the month of September, 1998 and out of 167 candidates, 48 persons have either retired from service on attaining the age of superannuation after being promoted upto the post of Assistant Manager and some of them have either been dismissed from service or died and some of the persons who are still in service have further been promoted to the higher posts of Daftri/Clerk-cum-Data Entry Operator/Field Officer/Assistant Manager, therefore, it would not be equitable to throw them out of service at this point of time.

14. The Hon'ble Supreme Court in case ***H.C. Puttaswamy and others v. the Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, 1991 (1) SCT 116***, has observed as under:-



xxx xxx xxx xxx

“ 13. There is good sense in the plea put forward for the appellants. The human problem stands at the outset in these cases and it is that problem that motivated us in allowing the review petitions. It may be recalled that the appellants are in service for the past 10 years. They are either graduates or double graduates or post graduates as against the minimum qualification of S.S.L.C. required for Second Division Clerks in which cadre they were originally recruited. Some of them seem to have earned higher qualification by hard work during their service. Some of them in the normal course have been promoted to higher cadre. They are now overaged for entry into any other service. It seems that most of them cannot get the benefit of age relaxation under Rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977. One could only imagine their untold miseries and of their family if they are left at the midstream. Indeed, it would be an act of cruelty at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection (See : **Lila dhar v. State of Rajasthan, 1981(1) SCR 320 at 326.**) ”

xxx xxx xxx xxx”

15. To the same effect is the judgement dated rendered by the Division Bench of this Court in **Shanti Devi v. State of Haryana 1999 (2) S.C.T. 575** and judgement passed by Single Bench of this Court in **Ranbir Singh v. The Haryana State Co-operative Apex Bank Ltd., and others, 2011 (16) SCT 453.**

16. In view of the settled proposition of law as referred above, when the petitioners themselves were found ineligible to be considered in the zone of selection, therefore, they cannot challenge the



appointment of other selected candidates, particularly when there is no allegation of any fraud or misrepresentation on the part of such innocent appointed person, so their appointment should not ordinarily be interfered with and they cannot be subjected to ouster from service without any justifiable reason, which directly impinge economic security of such appointed persons as well as their dependants, therefore, there is no ground, evidence or material on record to substantiate the claim of the petitioners challenging the correctness of selection list(s) in question, who have completed more than 26 years of service and are either at the fag end of superannuation and the circumstances of this peculiar case justify an humanitarian approach towards the appointed persons, therefore, finding no merit, the petitions are hereby dismissed with no order as to costs.

17. Pending application(s), if any, also stand disposed of.

17.09.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No