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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14396-2016
Date of Decision: 16.04.2024

RAJWINDER KAUR

...Petitioner

Versus

STATE OF PUNJAB ETC

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Manish Kumar Singla, Advocate with
Mrs. Shikha Singla, Advocate and
Mr. Dinesh Kumar, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

Mr. R.S. Dhillon, Advocate
for respondent No.5.

Mr. Rahul Verma, Advocate for
Mr. Rajinder Goyal, Advocate
for respondent No.6.

Mr. Ashwani Talwar, Advocate with
Mr. Sahej Mahajan, Advocate
for respondent No.7.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of
Constitution of India is seeking setting aside of appointment letter dated
05.11.2013(Annexure P-4).

2. The respondent No.3 issued an advertisement dated 06.06.2013 inviting applications for the post of Anganwari helpers and workers at different blocks of District Sangrur. The petitioner pursuant to said application applied for the advertised post. In the advertisement, the last date for filing application was notified as 20.06.2013. The respondent-Child Development & Project Officer, Bhawanigarh prepared merit list (Annexure P-2) wherein name of petitioner figured at serial No.1. The date of interview was 13.08.2013. The respondent did not conduct interview on the said date and finally selected respondent No.7 instead of petitioner and issued her appointment letter dated 05.11.2013.

3. Mr. Manish Kumar Singla, Advocate submits that last date to apply, as per advertisement, was 20.06.2013, thus, no application filed after the said date could be entertained. The respondent No.7 filed application on 05.08.2013 and came to be selected. There was connivance between respondent No.7 and Child Development & Project Officer, Bhawanigarh. Thus, in a stealth manner, appointment of respondent No.7 was made after accepting her application beyond cut off date.

4. Mr. Ashwani Talwar, Advocate for private respondent (respondent No.7) submits that Child Development & Project Officer, Bhawanigarh vide communication dated 29.07.2013, in view of Panchayat Elections, extended the last date for filing application. As per said communication, the last date was extended up to 09.08.2013 and respondent No.7 applied on 05.08.2013, thus, argument of petitioner that she had applied after cut off date is misconceived. She had applied in view of extended date and no prejudice was caused to petitioner on account of

extension of date. The merit list was prepared by Child Development & Project Officer, Bhawanigarh and same authority had extended last date, thus, petitioner cannot be heard to say that last date was extended by an officer who was incompetent.

5. Mr. Aman Dhir, DAG, Punjab, supporting case of private respondents, submits that as per instructions of State Government, the Child Development & Project Officer, Bhawanigarh is competent to extend last date for filing application and date was actually extended. Thus, there was no violation of procedure and respondent No.7 was rightly selected.

6. Faced with this, Mr. Manish Kumar Singla, Advocate submits that original advertisement was issued by District Program Officer, Sangrur who was competent authority to issue advertisement and amend the same. Child Development & Project Officer, Bhawanigarh was incompetent to extend the last date for filing application.

7. I have heard learned counsel for the parties and perused the record with their able assistance.

8. The claim of the petitioner is that respondent No.7 has been wrongly appointed because last date for filing application was 20.06.2013 whereas she has filed application on 05.08.2013. She further claims that Child Development & Project Officer, Bhawanigarh was incompetent to amend advertisement as original advertisement was issued by District Program Officer who had fixed 20.06.2013 as last date for filing application.

9. The State in its reply has contended that Child Development & Project Officer, Bhawanigarh was Competent Authority to extend last date

for filing application. The State is further averring that last date was extended in view of Panchayat elections.

10. From the perusal of record, it comes out that Child Development & Project Officer, Bhawanigarh extended last date for filing application. The respondent No.7 applied for the post on 05.08.2013 and as per letter dated 29.07.2013, the date was extended up to 09.08.2013. The petitioner is harping on the issue that Child Development & Project Officer, Bhawanigarh was not competent and prescribed procedure was not followed to extend last date for filing application. The State is claiming that Child Development & Project Officer, Bhawanigarh was competent. The petitioner is alleging that merit list (Annexure P-2) was prepared wherein name of respondent No.7 was not appearing. The said list was prepared prior to 09.08.2013 and it was also prepared by Child Development & Project Officer, Bhawanigarh. These facts collectively indicate that as per petitioner, date was not extended or if it was extended, it was by an incompetent officer. As per respondent, the date was extended by a Competent Officer. There is no evidence disclosing connivance between respondent No.7 and Child Development & Project Officer, Bhawanigarh, thus, for any procedural as technical defect, on the part of officials, the respondent No.7 cannot be made to suffer.

11. There is another aspect of the matter. The respondent No.7 was appointed in 2013 and a period of 11 years has passed away. Concededly, she is working since then. She must have acquired good experience. From the record, it does not come out that there was any lapse on her part.

Violation of procedure, if any, was on the part of the authority. The

appointment of respondent No.7 at this belated stage does not deserve to be quashed on technical or procedural grounds.

A five Judge Bench of Supreme Court in “***Sivanandan C.T. & Ors. Vs. High Court of Kerala & Ors. 2023 SCC Online SC 994***”, while holding that there was violation of procedure while making appointment of judicial officer, has held that it would be contrary to public interest to direct the induction of petitioners into Higher Judicial Service after the lapse of more than six years. The candidates who have been selected nearly six years ago cannot be unseated. The relevant extracts of the judgment read as under:-

“55. The following are our conclusions in view of the above discussions:

- (i) The principles of good administration requires that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being termed as arbitrary and violative of Article 14;*
- (ii) An individual who claims a benefit or entitlement based on the doctrine of substantive legitimate expectation has to establish the following: (i) the legitimacy of the expectation; and that (ii) the denial of the legitimate expectation led to a violation of Article 14;*
- (iii) A public authority must objectively demonstrate by placing relevant material before the Court that its decision was in the public interest to frustrate a claim of legitimate expectation;*
- (iv) The decision of the High Court of Kerala to apply a minimum cut-off to the viva voce examination is contrary to Rule 2(c)(iii) of the 1961 Rules.*
- (v) The High Court’s decision to apply the minimum cut-off marks for the viva voce frustrates the substantive legitimate expectation of the petitioners. The decision is arbitrary and violative of Article 14.*

(vi) In terms of relief, we hold that it would be contrary to the public interest to direct the induction of the petitioners into the Higher Judicial Services after the lapse of more than six years ago cannot be unseated. They were all qualified and have been serving the district judiciary of the state. Unseating them at this stage would be contrary to public interest. To induct the petitioners would be to bring in new candidates in preference to those who are holding judicial office for a length of time. To deprive the state and its citizens of the benefit of these experienced judicial officers at a senior position would not be in public interest.”
[Emphasis supplied]

12. In the wake of above discussion and judgment of Supreme Court in *Sivanandan C.T. (supra)*, this Court finds that present petition deserves to be dismissed and accordingly dismissed.

16.04.2024
himanshu

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No