

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.18940 of 2016 (O&M)
Reserved on: 31.01.2024
Pronounced on: 13.02.2024

Gagandeep Singh Sandhu and others
.....Petitioners
Versus
Punjab State Power Corporation Limited
.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Amaninder Preet, Advocate
for the petitioners.

Mr. Sehajbir Singh, Advocate
for the respondent/PSPCL.

Mr. Vijay Pal, Advocate
for the applicants/proposed respondents No.2 to 115
(in CM-13076-CWP-2016)

NAMIT KUMAR J.

1. The petitioners have approached this Court by way of filing the instant petition under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari, for setting-aside the letter dated NIL (Annexure P-8), vide which the candidates have been called for checking of documents and further directing the respondent that prior to calling the candidates for checking of documents firstly bifurcate the seats/posts amongst the Junior Engineer/Electrical viz-a-viz Electrical, Computer Science and IT.
2. The brief facts, as have been pleaded in the petition, are that the petitioners have passed out their Degree/Diploma in Bachelor of

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Technology in Computer Science/Information Technology and the respondent/Corporation vide advertisement dated 17.06.2015 (Annexure P-1) advertised various posts including 506 posts of Junior Engineer/Electrical (Post Code – 21) and the petitioners being eligible have applied for the same. Thereafter, certain candidates filed CWP No.13635 of 2015, seeking quashing of the advertisement (Annexure P-1) to the extent that for the post of Junior Engineer/Electrical, Full time Regular 3-4 years Diploma in Computer Science and IT Engineering and B.E./B.Tech/B.Sc Engineering in Computer Science/IT Engineering may be done away with and they also sought directions to the respondent to exclude the candidates from Computer Science/IT Engineering stream to appear for the examination of Junior Engineering/Electrical (Post Code-21) on the ground that computer study has no nexus with the posts of Junior Engineer/Electrical, however, the same was dismissed as withdrawn with liberty to the petitioners to make a representation and the respondent was directed to consider and decide the same by passing a speaking order, vide order dated 10.07.2015 (Annexure P-2). Thereafter, the petitioners filed representation before the respondent, however, the same was rejected by passing a speaking order. Again some candidates approached this Court by filing a petition i.e. CWP No.16973 of 2015 vide which interim stay was granted vide order dated 25.08.2015 to the effect that *‘the examination process may continue, however, the result shall not be finalized’*. Thereafter, vide order dated 29.07.2016, the interim order was modified by permitting the appointments to be made subject to the

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decision of said writ petition. Thereafter, vide order dated 20.10.2016, the writ petition was ordered to be withdrawn, which reads thus:-

“Five petitioners, namely, Gurvinder Kumar, Yoginder Singh, Kamaldeep Singh, Kanwaljit Singh and Kulvir Sekhon possess the qualification of Degree in Electrical Engineering. They were aspirants for appointment to 506 posts of the Junior Engineer (Electrical), pursuant to the advertisement dated 17.06.2015 (Annexure P-5). The selection process envisaged a written test to determine the merit for appointment.

The grievance of the petitioners was that the persons with Degree in Computer Science/I.T. Engineering were made eligible for recruitment to the post of Junior Engineer in the Electrical Wing, as it is contended that there was no nexus of the Degree with the job performance of the post.

This Court, vide interim order dated 25.08.2015, had stayed the finalization of the written test conducted for recruitment.

Upon an application for modification, vide order dated 29.07.2016, the interim order was modified by permitting the appointments to be made subject to the decision of the present writ petition as, prima facie, it was shown that in the light of the modernization and upgradation of the PSPCL, the decision to make the candidates with Degrees in Computer Science and/or I.T. Engineering to be eligible was justified.

At the time of hearing today, learned Counsel for the petitioners prays for permission to withdraw the present petition in order to challenge the Circular dated 01.04.2015, whereby amendment in the essential qualification for recruitment to the post of J.E. (Electrical)

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has been effected, vide which the Degrees in Computer Science and/or I.T. Engineering have been included.

Learned Counsel for the respondent has no objection to the same.

In view of the above, the present petition stands dismissed as withdrawn with the aforesaid liberty.”

The respondent/Corporation conducted the test, in which the petitioners appeared and qualified the written test, however, the respondent/Corporation has not made any bifurcation of seats amongst the Electrical and Computer Science/IT stream. Hence, the present petition has been filed.

3. On issuance of notice of motion, reply by way of affidavit of Rakesh Kumar Bawa, Deputy Secretary Recruitment, Punjab State Power Corporation Limited, Patiala, on behalf of the respondent has been filed wherein it has been stated that since the respondent/Corporation was in a phase of upgradation of its technological know-how and upgradation of its conventional hardware/software set-up and incorporating latest user friendly systems like SAP, building proper data centre, online billing system, etc., therefore, the basic and professional qualifications for the post of Junior Engineer (Electrical) was amended by a resolution of the Board of Directors of the respondent/Corporation, before advertising the posts, in question and thus, the relief sought by the petitioners cannot be granted since no post whatsoever for Junior Engineer (Computer Science) or Junior Engineer (IT) was advertised separately in the advertisement (Annexure P-1).

4. Learned counsel for the petitioners submits that since the

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petitioners possess the Degree/Diploma in Bachelor of Technology in Computer Science/Information Technology, therefore, they qualified the written test and later on, the petitioners were called for documents checking pursuant to the advertisement (Annexure P-1). He further submits that the posts advertised for Junior Engineer Electrical should be bifurcated into Junior Engineer Electrical/Computer Science or IT as the modern technology and better facilities can be provided only if the candidates from the same fields are given due opportunity. Lastly, he submits that the action of the respondent/Corporation in not bifurcating the seats is illegal, arbitrary and unsustainable in the eyes of law.

5. On the other hand, learned counsel for the respondent submits that the advertisement (Annexure P-1) was never challenged and the cadre of respondent/Corporation does not have any post of Junior Engineer/Computer Science/IT. He further submits that since the petitioners have participated in the selection process as such, they have accepted the terms and conditions of the said advertisement. He also submits that the petitioners were aware of the fact that the advertisement did not carry any post of Junior Engineer/Computer Science/IT, yet they participated in the same, therefore, they cannot raise a ground at a belated stage that the posts ought to be bifurcated. He further submits that the petitioners are unsuccessful candidates in the selection process as they have secured lower marks than the cut-off marks. He has placed reliance upon the judgment of the Hon'ble Supreme Court in ***“Sadananda Halo vs Momtaz Ali Sheikh”*, (2008) 4 SCC 619**. The operative part of the said judgment, reads as under:-

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*“It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in **Union of India & Ors. v. S. Vinod Kumar & Ors [(2007) 8 SCC 100]** where one of us (Sinha, J.) was a party. This was a case where different cut off marks were fixed for the unreserved candidates and the Scheduled Caste and Scheduled Tribes candidates. This Court in para 10 of its judgment endorsed the action and recorded a finding that there was a power in the employer to fix the cut off marks which power was neither denied nor disputed and further that the cut off marks were fixed on a rationale basis and, therefore, no exception could be taken. The Court also referred to the judgment in **Om Prakash Shukla vs. Akhilesh Kumar Shukla & Ors. [(1986) Supp. SCC 285]** where it has been held specifically that when a candidate appears in the examination without protest and subsequently found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise. The Court further made observations in para 34 of the judgment to the effect:*

"There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

6. I have heard learned counsel for the parties and perused the

record with their able assistance.

7. Admittedly, the advertisement clearly provides that the posts, which was advertised vide advertisement (Annexure P-1) are of Junior Engineer/Electrical and the cadre of respondent – Corporation does not have any post of Junior Engineer/Computer Science/IT. The petitioners have participated in the examination in response to said advertisement and as such, they have accepted the terms and conditions of the advertisement. The qualification of Computer Science and IT was only included for the post of Junior Engineer (Electrical) keeping in view the requirement of Junior Engineers to have knowledge of Computer Science/IT Engineering as the respondent/Corporation were in the process of implementing the modern technology. The status of petitioners in the merit list is as under:-

Sr. No.	Name of the Petitioner	Category of Petitioner	Marks in the exam	Status in Category wise merit list
1.	Gagandeep Singh Sandhu (B.Tech/IT)	SC/Others	46.08	Merit No.267
2.	Jaspreet Singh (B.Tech/CSE)	General	62.25	Merit No.388
3.	Rasbir Singh	General	58.01	Merit No.544

The cut-off marks for General Category are 64.11 while that of SC/other Category are 54.75 and from the perusal of the aforesaid, all the petitioners have secured marks lower than that of the cut-off marks and thereby remained unsuccessful in the selection process. It is settled position of law that unsuccessful candidates cannot turn back and assail the selection process. More so, no challenge has been laid to the advertisement in question. The petitioners were aware

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of the fact that advertisement did not carry any post of Junior Engineer/Computer Science/IT and yet participated in the same. After participating in the same now they cannot be permitted to raise a ground that the posts ought to be bifurcated especially in view of the fact that the petitioners are unsuccessful in the selection process and the respondent/Corporation has no post of Junior Engineer/Computer Science/IT and the recruitment process has already been completed.

8. For the foregoing reasons and in view of the law laid down by the Hon’ble Supreme Court in *Sadananda Halo’s case (supra)*, the present petition is dismissed.

9. Pending applications, if any, also stand disposed of.

(NAMIT KUMAR)
JUDGE

13.02.2024

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