

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

217

CWP-27315-2017

Date of reserve : 09.01.2024

Date of pronouncement : 29.01.2024

CHARANJOT SINGH

..... Petitioner

Versus

PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING
FEDERATION AND OTHERS

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Puneet Bali, Sr. Advocate with
Mr. Vibhav Jain, Advocate with
Mr. Vishavjeet S. Beniwal, Advocate
for the petitioner.

Mr. Supinder Singh Sohi, Advocate for
Mr. Sukhdeep Singh, Advocate
for the respondent nos. 1 & 2.

Respondent nos.3 to 5 have already been proceeded ex parte
vide order dated 22.11.2023.

NAMIT KUMAR, J. (Oral)

1. The petitioner has approached this Court by way of filing the instant petition under Article 226/227 of the Constitution of India seeking writ of *Certiorari* for quashing the selection and appointment of respondent nos.3 to 5 on the post of Assistant Field Officer and further seeks writ of *mandamus* directing the respondents to appoint the petitioner on the post of Assistant Field Officer w.e.f. the date of appointment of respondent nos.3 to 5, with all consequential benefits.

2. The brief facts leading to the filing of the present petition, as have been pleaded in the writ petition, are that the Respondent – Punjab State Co-operative Supply and Marketing Federation Ltd. (here-in-after referred to as 'MARKFED'), for recruitment to 327 posts, invited applications through online mode for various posts, including 62 posts of 'Assistant Field Officer', which included 07 posts for General Category and 27 posts for Scheduled Castes. The last date for submission of online applications was 30.05.2016 and the last date for depositing the fee was 06.06.2016.

3. On 31.05.2016, the petitioner applied for the post of Assistant Field Officer in General Category and thereafter appeared for written examination/ test. After the written test, counselling list of meritorious candidates was prepared and as per that list, counselling was scheduled for three spells i.e. first counselling from 25.10.2016 to 28.10.2016; second counselling from 17.11.2016 & 18.11.2016 and the third counselling on 26.12.2016. The petitioner was called in the second counselling, which was to be held on 17.11.2016. The case of the petitioner is that he could not appear in the counselling held on 17.11.2016, as he fell ill and was suffering from severe back pain and Chickenpox. It is the further case of the petitioner that on 21.12.2016, the petitioner alongwith his father visited the office of the respondent-Federation, but the Managing Director was not present, as it was informed by the Dealing Assistant – Mr. Jasbir Singh that the Managing Director was not available. Thereafter, the petitioner on 22.12.2016 again personally visited the office of respondent no.1 and met respondent no.2 – Managing Director of the Federation and submitted written application alongwith medical certificate issued by the Doctor and requested that since the 3rd counselling is scheduled to be held on 26.12.2016, his case may be considered in the said counselling i.e. on 26.12.2016. However, his name was not included in

the schedule of third counselling held on 26.12.2016. It is his further case that respondent nos.3 to 5 are lower in merit to the petitioner and were at Serial Nos.14, 15 and 19, respectively, in order of merit, as the name of the petitioner was at Serial No.13 and since the said respondents have been appointed by ignoring the claim of the petitioner, therefore, their selection is liable to be set aside and he is entitled to be appointed on the post of Assistant Field Officer.

4. Learned Senior counsel for the petitioner has contended that the absence of the petitioner on 17.11.2016, when the second counselling was scheduled to be held, was *bona fide* as he was suffering from severe back pain and *Chickenpox* and on his recovery, he immediately submitted a request to the Managing Director, MARKFED, on 22.12.2016 (Annexure P-5) alongwith his medical certificate and since the third counselling was scheduled for 26.12.2016, therefore, it was incumbent upon the respondent – MARKFED to allow the petitioner to participate in the third counselling. He further submits that the action of the respondents is also discriminatory as one of the candidate, who was also scheduled to appear in the second counselling alongwith the petitioner on 17.11.2016, but he could not appear so, was allowed to participate in the third counselling on 26.12.2016.

5. *Per contra*, learned counsel for Respondent Nos.1 and 2 has referred to the written statement filed by them and argued that since the petitioner has failed to appear in the scheduled second counselling held on 17.11.2016 and no intimation whatsoever, prior to the 17.11.2016, was given by the petitioner about his proposed absence, therefore, he had no right to participate in the third counselling on 26.12.2016, as the counselling schedule itself provides that in case a candidate fails to appear on the given date, it will be assumed that he is not interested in taking up the appointment and the candidate next in merit shall

be offered the post. He also submits that the request of the petitioner was received after more than one month of conclusion of the 2nd counselling and therefore, request of the petitioner, including requests of all other candidates, whose requests were received after the date of counselling, were rejected. He further submits that as many as 56 candidates were absent in the counselling held on 17.11.2016 and the name of the petitioner was at Sr. No.45 in the said Absent List (Annexure R-1, 2/3). He further submits that the action of the respondent – MARKFED in not considering the claim of the petitioner in the third counselling is perfectly legal and valid and as per the criteria fixed for the selection process *qua* the advertised posts.

6. I have heard learned Senior counsel for the petitioner as well as counsel for the respondents and perused the record with their able assistance.

7. The facts are not in dispute that the petitioner and other candidates, who were called for counselling, were required to be personally present alongwith his original certificates regarding his age proof, Punjabi pass, essential qualification, computer knowledge, experience certificate as per prescribed qualification / requirement of the post and certificate of category under which reservation / age relaxation has been sought. The relevant portion of the letter dated 11.11.2016 (Annexure P-4), whereby the schedule for second counselling was issued, reads as under:-

xxx

xxx

xxx

xxx

“

Dated: 11.11.2016***Schedule for 2nd counselling:-***

On the basis of the written test held on 25th September, 2016 the detailed result has been uploaded on the Markfed website www.markfedpunjab.com.

As per the merit list, 1st counselling was scheduled from 25th to

28th October 2016 in the office of Punjab State Cooperative Supply and Marketing Federation Limited (MARKFED), Plot No.4, Sector -35-B, Chandigarh (Annexure-L dated 7.10.2016) and result of the counselling has been uploaded on Markfed website on 11.11.2016 (Annexure-X). After considering the eligible candidates, some posts in various categories still remain unfilled. Therefore, candidates who are next in merit are being called for second counselling.

The following candidates are required to personally present their original certificates regarding age proof, Punjabi pass, essential qualification, computer knowledge, experience certificate as per the prescribed Qualification/ requirement of the post and certificate of category under which reservation/ age relaxation has been sought in the office of Punjab State Cooperative Supply and Marketing Federation Limited (MARKFED), Plot No.4, Sector-35-B, Chandigarh on 17th & 18th Nov. 2016 as per the schedule given below:-

Sr. No	Name of Post	Category	Roll Numbers as per merit list
4.	Assistant Field Officer	General	575701, 576183, 575874, 576072, 576036, 575767 , 575837, 575832, 575604, 575759, 575915
		SC	576005, 575606, 576233, 576125, 575656, 576123, 576068
		BC	575724, 576079, 575590, 575568, 575588, 575818, 575006
		Sportsman (Gen)	575867, 576179
		Sportsman (SC)	576152, 576233

In case, a candidate fails to appear on the given date, it will be assumed that candidate is not interested in taking up the appointment and the candidate next in merit shall be offered the post. Candidates approximately two times the number of the remaining vacant posts after the 1st counselling have been invited for verification of their documents.

It is clarified that mere appearing in the test, qualifying the

same & invitation to the counselling does not in any way entitle the candidate for appointment to the post applied for. Appointment to the post is subject to fulfillment of prescribed qualification, experience & verification of original documents in this regard. Further the appointment shall be strictly as per the merit depending upon number of posts available in the particular category. Reservation shall be as per policy/ instructions of the Govt of Punjab.

Candidates are advised to submit one set of Self Attested copies of all the documents on scheduled date of counselling. ”

xxx xxx xxx xxx

8. Admittedly, the petitioner did not appear in the second counselling held on 17.11.2016, and it is the case of the respondent – MARKFED that not only the petitioner was absent as many as 56 candidates were absent in the second counselling held on 17.11.2016, as is clear from the Absent List (Annexure R-1, 2/3).

9. The Hon'ble Supreme Court of India in 'Asha versus Pt. B.D. Sharma University of Health Sciences & Ors.' 2012 (3) S.C.T. 457, which was a case relating to the admission of M.B.B.S. and B.D.S. courses, has held that the Schedule is sacrosanct like the rule of merit and all the stakeholders including the concerned authorities should adhere to it and should in no circumstances permit its violation. The findings recorded in the relevant para(s) of the said Judgement are as under:-

xxx xxx xxx xxx

“ 26. Strict adherence to the time schedule has again been a matter of controversy before the courts. The courts have consistently taken the view that the schedule is sacrosanct like the rule of merit and all the stakeholders including the concerned authorities should adhere to it and should in no circumstances permit its violation. This, in our

*opinion, gives rise to dual problem. Firstly, it jeopardizes the interest and future of the students. Secondly, which is more serious, is that such action would be ex-facie in violation of the orders of the court, and therefore, would invite wrath of the courts under the provisions of the Contempt of Courts Act, 1971. In this regard, we may appropriately refer to the judgments of this Court in the cases of Priya Gupta (supra), **State of Bihar v. Sanjay Kumar Sinha & Ors. [(1990) 4 SCC 624]**, **Medical Council of India v. Madhu Singh & Ors. [(2002) 7 SCC 258]**, **GSF Medical and Paramedical Association v. Association of Management of Self Financing Technical Institutes and Anr. [2003 (12) SCC 414]**, **Christian Medical College v. State of Punjab and Others [(2010) 12 SCC 167]**.*

29. In the prospectus issued by the respondents, Chapter 9 dealt with the method of selection and admission. Clause 3.1 stated that it was mandatory for the qualified candidates to appear before the counselling Board in person. No relaxation was to be given to the candidates who were unable to appear before the counselling Board on the fixed dates. Further, it was stated in the prospectus that at the time of the counselling, the candidates would be required to exercise their choice for the institution and the course. The allotment of the seats would be made according to the merit and preference exercised by the candidates at the time of counselling. During the subsequent counselling the Course/Institution would be allotted as per the merit of the candidates depending on the availability of seats. ”

xxx xxx xxx xxx

10. Further, the Full Bench of this Court in case(s) titled as '**Amardeep Singh Sahota versus State of Punjab' 1993 (4) S.C.T. 328 and 'Rahul Prabhakar versus Punjab Technical University, Jalandhar' 1997 (3) S.C.T. 526**

has held that the Prospectus has the force of law and its conditions have to be strictly construed and rights of parties are governed by the terms and conditions mentioned therein and any relaxation in that matter may lead to illegal and

arbitrary action on the part of the authorities.

11. Further, a Co-ordinate Bench of this Court in case titled as '**Talveen Kuar versus Punjab University and another**', 2010 (8) S.L.R. 582, wherein the application form of the petitioner was received by the University beyond the time fixed for receipt of such form, despite he being fetched the ranked No.15 against 80 cases, while referring the case of '**Sachin Sharma versus Punjab University**', 2002 (1) S.C.T. 1124 and finding the issue/question to be *res integra* held that the petitioner cannot be permitted to participate in the counselling. The relevant portion of the Judgement is as under:-

xxx xxx xxx xxx

*“ The petitioner participated in Common Law Admission Test (CLAT), 2009, conducted by respondent University and obtained rank No. 15 against 80 seats. The petitioner was required to fill up the admission form for seeking admission in the Five Years Law Course for which the necessary advertisement/notification was issued and the last date for submitting the admission form was 30.6.2009. It is petitioner's own case that on account of her illness she sent form on 30.6.2009 from Jammu. This clearly implies that the form has been received by the respondent University beyond time fixed for receipt of the application form. On that basis, the petitioner has been denied participation in the counselling. The petitioner has accordingly approached this Court through the medium of this petition seeking a direction to permit him to participate in the counselling and to admit him in the Five Years Law Course in the Law Department of respondent -University. The averment made in this petition, itself establish that the petitioner admission form was not submitted within the prescribed period. This question is no more res integra having been decided by a Division Bench of this Court in the case of **Sachin Sharma v. Punjab University, 2002 (1) S.C.T. 1124** wherein following observation has been made:-*

"4. We have heard learned counsel for the parties at some

*length. The facts are hardly in dispute in the present case. The petitioner alongwith number of other candidate could not submit their final year result or even detailed mark-sheet before the competent authority within the prescribed period i.e. 4.7.2001. They were unable to produce the said documents even by extended date i.e. 20.7.2001. The result was declared on 20.8.2001. Thereafter the petitioner could have produced the said result before the authorities. It is clear that, no fault is attributable to any of the respondents. As per the Full Bench judgment of this Court in the case of **Amardeep Singh Sahota v. State of Punjab and others, 1993 (4) SCT 328 (P&H) (FB) : 1993(4) SLR 673 and Rahul Prabhakar v. Punjab Technical University, Jalandhar and others, 1997 (3) SCT 526 (P&H) (FB) : 1997 (3) PLR 13** terms and conditions of the brochure are binding...."*

2. In view of the above, no relief can be granted to the petitioner, despite his higher rank in the test, I find no merit in this petition which is accordingly dismissed. "

xxx

xxx

xxx

xxx

12. So far as the argument raised by learned senior counsel for the petitioner with regard to the discrimination that one candidate, who was also scheduled to appear in the second counselling on 18.11.2016, though absented was allowed to participate in the third counselling, is concerned, it is an admitted fact on record that the said candidate had informed the respondent authorities in advance on 17.11.2016 that he shall not be able to attend the counselling on 18.11.2016 due to severe fever (Typhoid) and therefore, he was allowed to appear in the third counselling. However, the case of the petitioner is totally different from the said candidate, as no intimation of any kind whatsoever was ever given by the petitioner in advance, as given by the said candidate in his case, prior to the scheduled counselling held on 17.11.2016, rather the petitioner had submitted his

application on 22.12.2016 (Annexure P-5) i.e. after a lapse of more than a month from the date of his counselling held on 17.11.2016, requesting the respondents to allow him to participate in the third counselling scheduled to be held on 26.12.2016.

13. Admittedly, the petitioner has failed to appear in the second counselling held on 17.11.2016, therefore, in terms of the conditions of the schedule, the post has been offered to the next available candidate and the petitioner cannot take benefit of his own wrong by not participating in the second counselling and submitting the request on 22.12.2016 i.e. after a period of more than one month from the scheduled second counselling, so as to to allow him to appear in the third counselling. Respondents No.3 to 5 are although lower in merit than the petitioner, however, they have participated in the counselling and have been offered appointments, therefore, no fault of any kind whatsoever can be attributed / found in the action of the respondent-authorities in appointing respondent nos.3 to 5 to the post of Assistant Field Officer, when as many as 56 other candidates were also absent on 17.11.2016, when the second counselling was held.

14. Keeping in view the foregoing discussions, no relief can be granted to the petitioner, as the petition is bereft of any merit and, therefore, the same is dismissed with no orders as to costs.

January 29, 2024
mkkoundal

(NAMIT KUMAR)
JUDGE

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