Narinder Pal Sharma and Another Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 18, 1994

Acts Referred: Punjab Civil Services (Executive Branch) (Class I) Rules, 1976 â€" Rule 10, 10(1), 10(2), 28, 5

Citation: (1994) 2 ILR (P&H) 156

Hon'ble Judges: Ashok Bhan, J; Amrit Lal Bahri, J

Bench: Division Bench

Advocate: H.S. Mattewal and Sukhbir Singh, for the Appellant; S.S. Shergill, D.A.G., for the Respondent

Final Decision: Dismissed

Judgement

A.L. Bahri, J.
Vide this order seven writ petitions (C.W.P. Nos. 10062 of 15838 of 1993, 67, 210, 390, 829 and 1463 of 1994) are

being disposed of as the question involved therein is common i.e. validity of the nominations made by the Competent Authority to the Punjab

Public Service Commission for selection to the post of P.C.S (Executive Branch). The department of Personnel and Administrative Reforms,

Government of Punjab issued circular dated June 24, 1993 in terms of provisions of Rule 10 of the Punjab Civil Service (Executive Branch)(Class

I) Rules, 1976 for making recommendations for filling 9 vacancies in the Punjab Civil Service (Executive Branch) to be filled up from Register A-

II, the Competent Authorities were requested to recommend the names of suitable and eligible candidates in the prescribed forms. The nominations

were to be sent as early as possible but in no case later than one month from the date of issue of the circular letter after which it was to be

presumed that such authorities had no candidates to nominate. Such Competent Authority would also take into consideration the deserving persons

belonging to Scheduled Castes and Backward Classes though no reservation existed for such classes. Certain other conditions were also laid

down which are not necessary for decision of these writ petitions. On November 10, 1993, another circular was issued under Rule 10(1) of the

Rules mentioning the names of the Authorities and number of nominations to be made by such Authorities as under:

Nominating Authority Number Of Nominations

1. Chief Minister. 2

2. Speaker, Punjab Vidhan Sabha. 1

3. Chief Justice of the High Court of2

Punjab and Haryana.

4. Ministers and Ministers of State. 1 (each)

5. Deputy Minister. 1 (each)

6. Chief Parliamentary Secretary and1 (each)

Parliamentary Secretary.

7. Chief Secretary. 5

8. Financial Commissioners. 1 (each)

It was further mentioned therein that for the reasons recorded Chief Minister was required to make four nominations instead of two. This was

ordered by relaxing the Rules as per power conferred under Rule 28 of the Rules.

2. The Chief Minister made four nominations. Some of the ministers initially made one nomination each. However, subsequently they desired that

by relaxation of the Rules their other nominations be also taken into consideration. Thus, some of the ministers made more than one nomination.

The Chief Secretary did make five nominations. However, he devised a method of selection which is required to be noticed. 70 marks out of lot of

100 were to be considered for service record. 10 marks were for the length of service, 20 marks were for written test i.e. in English and Punjabi

10 marks for each subject. Since he provided the aforesaid formula it took some time to hold the test, and his recommendations obviously were

made after expiry of the period mentioned in the circular mentioned above. The Personnel Department of the State Government scrutinised

different nominations made by the respective authorities and ultimately forwarded the names of such of the candidates whose nominations were

found to be in order and rejected some nominations which led to the filing of the present set of writ petitions.

3. C.W.P. No. 67 of 1994 has been filed by Gurjit Singh, who at the relevant time of making nominations happened to be posted in the office of

Minister of Public Works. He worked there from July 22, 1993 to July 26, 1993. His name was recommended by the Minister concerned but was

withheld by the Government (Punjab Government in the Personnel Department). Some instances were mentioned in the writ petition of such of the

persons who had worked for a short-while in some offices or under some officers and their names were recommended by the competent Authority

and subsequently forwarded to the Public Service Commission. The details of four such persons are given in para 16 of the writ petition and briefly

are as under:

(a) Gurdip Singh, Senior Assistant Health-II Branch:

Minister for Medical Education and Research nominated his name and the aforesaid minister took charge on July 9, 1993.

(b) Mukand Singh Sandhu, Sr. Assistant Education-I Branch:

The Education Minister (Shri Lakhbir Singh Randhawa) took over as such on July 9, 1993 and recommended the name of Mr. Sandhu during the

period upto July 1993.

(c) Tarlochan Singh Mankotia, PA to Governor. On the date of alleged nomination, he was working with the Governor and his name was

recommended by the Chief Secretary.

(d) Baljinder Singh Sodhi, P.A. to Secretary Health Chief Secretary never saw his work but nominated him.

4. In the written statement filed by the Joint Secretary to the Government of Punjab, Department of Personnel some preliminary objections were

taken, inter alia. Challenging locus standi of the Petitioner to challenge the action of the State Government. Only the nominating authority could

object. No legal right of the Petitioner was infringed that he could approach this Court. Even a successful candidate could not exert any right to be

appointed. The name of the Petitioner and the like other 15 in number were withheld on account of certain deficiencies and infirmities. Such

nominations were not found to be in order or valid. Reliance was placed on the Rules briefly quoted above that the Competent Authority could

nominate such number of persons as mentioned in Rule 10. Reference was made to Rule 10(2) providing eligibility of the persons to be nominated.

There were three conditions as mentioned therein which deserves to be noticed at this stage.

(a) The person concerned should be a confirmed hand, had completed 10 years continuous service under the Government;

(b) That he was under 45 years of age on the first day of November immediately preceding the date of submission of names;

(c) That he is a Graduate of a recognised University. The Final Authority of forwarding the nominated names to the Public Service Commission

was Government (Punjab Government in the Personnel Department). The Government was to see that the nomination was in order and valid and

could reject such names which were not in order.

Reference was made to the Government of Punjab Allocation of Business Rules, 1986 in respect of different departments of the Government to

work under different Secretaries etc. The department of Personnel Policies Wing, Administrative Reforms, Training Wing and Establishment

matters were under the Department of Personnel, Administrative Reforms under the control of the Chief Secretary and under the Chief Minister.

The withholding of the nominations which were hot in order was done under orders of the Chief Minister and not merely at the level of the Chief

Secretary. Suitability, on the basis of merit it was alleged, was the function of the Punjab Public Service Commission. On merits it was stated that

Gurjit Singh Petitioner succeeded in getting himself posted temporarily against a non-sanctioned post firstly as an internal arrangement and that too

just a day before the last date fixed for the receipt of nominations. Normally such posting transfer could be made from amongst the leave reserve

officials and not from amongst those who already stood regularly posted in a particular department. The Petitioner was posted temporarily for

flood duty and he worked for this purpose just for 2 days. His temporary posting could not be taken at par with permanent posting. Reference

was made to Annexures R.1 and R.2. Vide Annexure R.1 the Minister of State for Public Works on July 21, 1993 required Shri Gurjit Singh to be

posted in his office for attending urgent office work for few days on account of flood situation. Vide Annexure R.2 an order passed by Joint

Secretary on July 22, 1995 Gurjit Singh was temporarily posted upto July 26, 1993 in the office of Minister of State for Public Works. After that

he was to join his previous Branch. On merits in para 5 of the written statement it was asserted that the nomination made by a nominating authority

was required to be objective and not subjective in nature. No joining/charge relinquishing report of the Petitioner existed in the office record. Thus

it was wrong to say that the Petitioner worked under the concerned nominating authority (Minister). Though in 1976 Rules, there was nothing

mentioned about the limit or period of work under the prescribed nominating authority. It was improbable that a person who succeeded himself to

be temporarily posted for a few days, could get himself validly nominated.

5. In C.W.P. No. 210 of 1994 Roshan Lal Goyal is the Petitioner who was working as Senior Assistant in the Punjab Civil Secretariat. However,

on July 20, 1993, he was posted in the office of Minister of Tourism and Cultural Affairs and Public Relations. His name was recommended by the

aforesaid Minister but his name was not forwarded by the Government. His case is similar to that of Gurjit Singh. The third case in the line is

C.W.P. No. 15838 of 1993 filed by Satish Kumar Singla and Ranjodh Singh Petitioners. Housing and Urban Development Minister, Punjab,

recommended the name of Satish Kumar Singla Petitioner and Agriculture and Forest Minister, Punjab, recommended the name of Ranjodh Singh

Petitioner No. 2, on July 23 and 22, 1993. Their names were not forwarded by the Government to the Commission. In these two writ petitions the

position is the same as in Gurjit''s case.

6. C.W.P. No. 829 of 1994 has been filed by Harbans Singh who was working as Senior Assistant in Financial Commissioner"s Secretariat. On

July 20, 1993 it is alleged that the Financial Commissioner (Appeals) Incharge Establishment Financial Commissioner"s Secretariat), Respondent

No. 3, recommended the name of the Petitioner. At that time Shri A.S. Pooni was the Financial Commissioner. The stand of the Respondents is

that inadvertently the name of Respondent No. 3 was included in the list of nominating authorises, According to the Respondents. Competent

Authorities, prescribed under the Rules. Since Shri Pooni was on special duty and administrative member designate, State Administrative Tribunal,

an Additional Financial Commissioner (Appeals) an ex cadre post of Financial Commissioner created for the period December 1992 to April 1,

1993 was not required to nominate. In the replication filed by the Petitioner it is stated that Shri Pooni is the senior-roost I.A.S. Officer being

senior to the Chief Secretary, Punjab. He was senior most Financial Commissioner though appointed against an ex cadre post. His appointment

was absolutely identical to the appointment of Shri Boparai (Copy Annexure P.7). Copies of three orders passed by Shri Pooni Annexures P.8 to

P.10 were produced that he was working as Financial Commissioner (Appeals). As Financial Commissioner he was competent to nominate under

the Rules.

7. In C.W.P. No. 390 of 1991 Jagdish Chander Bhatia, a Senior Assistant. Publicity Cell. National Integration Council, Punjab Civil Secretariat, is

the Petitioner. He claims a mandamus for striking down the nominations Respondents Nos. 3 to 7, Jaspal Singh and others and for further

directions to the Respondents to nominate his name to the Punjab Public Service Commission. This case relates to nominations made by the Chief

Secretary. As briefly stated above when he invited applications for making nominations, 85 applications were received by him. He decided to hold

ability-test"" which test is not provided under the Rules and this was not the earlier practice. Notice regarding ability test was issued on July 30,

1993 for conducting the test on August 2, 1993 between 12 to 13 hours. The test comprised only of essay writing in English as well as Punjabi of

half-an-hour duration each. Through manipulation of results Respondents Nos. 3 to 7 were picked up against the quota of five names. In this

petition further allegation has been levelled that by relaxing the Rules in exercise of power under Rule 28 the quota of the Chief Minister for

nomination as increased from 2 to 4. Annexure P.2 is the notification dated November 10, 1993, in this respect. The Minister Incharge of the

department of Information and Public Relations had initially nominated another person. When it was found that the person nominated by him was

ineligible, the said Minister nominated the Petitioner in his place, further recommending the delay, if any, be condoned. The name of the Petitioner

was not forwarded by the Government that he has approached this Court.

8. In the written statement filed by the official Respondents the locus standi of the Petitioner to file the petition was challenged. The matter of

nominations being discretionary, the Petitioner had no right to claim the use of this power in his favour. The ability test was aimed at finding out the

best of the whole lot as also to short-list the candidates in an equitable and discreet manner. Oat of 87 applications received it was necessary to

short-list the candidates. A committee of officers was constituted for this purpose for short-listing the candidates equivalent to twice the number of

nominations to be made by adopting a fair and just methodology. The Committee decided to hold the ability test besides evaluating the annual

confidential reports and experience. Break-up of 100 marks has been given in the written statement. 70 marks were allotted on the basis of

grading of annual confidential reports as under:

Outstanding 6

Very Good 4

Good 2

Average 1

Appreciation 1

Adverse remarks 1

The total marks were not to exceed 70. 10 marks were allocated for experience as under:

10 years and experience 4 marks

11 to 15 years experience 6 marks

15 to 20 years experience 8 marks

20 years experience and above10 marks

Ability test prescribed was to carry 20 marks in English and Punjabi essay writing. Accordingly recommendations were made of the five

candidates, i.e. Respondents Nos. 3 to 7. Additional affidavit of the Petitioner by way of replication was filed, inter alia, asserting that the answer-

sheets should be summoned, as no sanctity was attached to the ability test. It was asserted that on account of manipulation in the marks

Respondents Nos. 3 to 7 were preferred. The decision to, hold the ability test after receipt of the applications was to favour few. On the basis of

annual confidential reports, persons other than Respondents Nos. 3 to 7 were to be recommended. Subsequent to the receipt of the applications

decision to introduce ability test was illegal.

9. In C.W.P. No. 10002 of 1993, again the challenge is to the manner of selecting five persons by the Chief Secretary. They pray for quashing the

ability test after receipt and consideration of entire service record of the concerned candidates which was not permitted by the Rules. This petition

has been filed by Narinder Pal Sharma and Harjinder Singh Sodhi, Senior Assistants. The pleadings are similar to the one C.W.P. No. 390 of

1994 aforesaid.

10. In C.W.P. No. 1463 of 1994, Prem Kumar Garg and Jasbir Singh Toor are the Petitioners. They claim mandamus directing the Respondents

to forward the nominations rolls of the Petitioners to the Public Service Commission and to quash orders passed by Respondent No. 2 excluding

their names from such nomination rolls. Prem Kumar Garg Petitioner No. 1, was working in the department of Industries. Punjab, which was under

the Minister Shri Karam Singh Gill. The aforesaid Minister was also a Minister for Tourism and Cultural Affairs. Petitioner No. 2 Jasbir Singh Toor

is working in the office of Finance Minister Dr. Kewal Krishan who was also heading Planning and Local Government Departments. As per

allegations Minister of Industries could nominate two names for members of Class II Services/Class III Services and Dr. Kewal Krishan could

recommend three persons as three departments were under him Shri Karam Singh Gill nominated Amarjit Singh Sethi who was working in the

department of Industries, Punjab. Dr. Kewal Krishan in fact nominated two candidates i.e. name of one Jarnail Singh and Petitioner No. 2 Jasbir

Singh Toor, Copy of his order is Annexure P.3. The Petitioners'' names were not forwarded to the Public Service Commission that they have

approached this Court in this writ petition. Vide Annexure P.2 dated July 6, 1993, Minister of State, Industrial and Cultural Affairs, recommended

Prem Kumar Garg''s name. Subsequently State Minister for Industries,--vide, his nomination dated November 17, 1993, which is in continuation

of his nomination dated October 7, 1993, mentioned that he had earlier recommended the name of Amarjit Singh Sethi and Prem Kumar Garg. If

he could nominate only one person one of the departments would remain unrepresented. By giving relaxation the names of two persons

recommended by him be forwarded. If the Government finds that the Rules cannot be relaxed then the name of Prem Kumar Garg from Register

''C'' be sent. The Financial Commissioner in his order Annexure P.3 mentions that earlier the name of Jarnail Singh was recommended and in

addition the name of Jasbir Singh Toor was being recommended. Written statement in this case has been filed by the official Respondents inter alia,

asserting that each Minister could recommend the name of one person only and the Government thus did not forward the names of other

candidates recommended by the Minister. The request for relaxation of Rules was received after about 4 months. No ground for relaxation was

made out.

11. Taking up the first lot of three cases i.e. writ petitions Nos. 67, 210 of 1994 and 15838 of 1993, the recommendations made by the

Competent Authorities under the Rules were not forwarded by the State on the ground that these Petitioners were under the Ministers for a very

short span of time and in fact the Petitioner secured their postings under the Ministers to get their names recommended. At the outset it may be

stated that no time limit is prescribed under any of the Rules for which a particular person must work under the Competent Authority that his name

could be recommended. By mere recommendation, no doubt, no right vests in a candidate for appointment to the P.C.S. (Executive Branch),

however, when Rules are framed, they are expected to be followed in substance. The consideration for promotion to higher rank in the manner

prescribed under the Rules is a right which can be claimed. At this stage, it would be relevant to consider in depth the arguments addressed by

learned Counsel for the parties with respect to locus standi of the Petitioners to file the petitions. Since this question is common in almost all the

petition, it is discussed at this stage. Before reference is made to the Rules on the subject, a fine distinction is necessary to be drawn between

nomination and selection. The Rules contemplate two stages in the process of final appointment of P.C.S. (Executive Branch). The first stage is of

nominating requisite number of candidates by the Competent Authorities as mentioned in the Rules reproduced above. The Government as defined

under the Rule is the department of Personnel. When the recommendations are made by the Competent Authority to the Government (Punjab

Government in the Personnel Department), these are to be processed and as is the stand of the State, this process is to determine as to whether

nominations are in order and valid. Rule 5 of the Rules provides for nationality, domicile and character of the candidates. Rule 6 provides for

disqualification. Rule 9 provides eligibility criteria of the candidates. Rule 9(5), in particular, provides that the name of the person is not to be

included in the final list unless he:

(a) is a confirmed hand and has completed eight years'' service as Tehsildar or ten years'' service as Naib Tehsildar or ten years service as

Tehsildar and Naib Tehsildar taken together;

(b) was under the age of 45 years on the first day of November immediately preceding the date of submission of names by the nominating

authorities; and

(c) is a graduate of a recognised University.

When Competent Authority under Rule 10 makes nominations of the candidates, it is the duty of the Government to scrutinise candidature of such

nominees keeping in view the provisions of Rules 5, 6 and 9. It is in this context that the State has rightly taken up the stand that it was the duty of

the Government to find out if the nominations were in order and valid. Apart from the above, the Government could not assume any powers to

withhold the candidature of rightly recommended candidates by the Competent Authorities to make nominations. With respect to the number pre-

scribed in Rule 10, if such Competent Authorities have made more recommendations than prescribed, the same could be legally withheld by the

Government. It may further be observed that the Rule does not provide for the substitution of the nominations once made, for whatsoever reason

may be, the earlier recommendation was invalid.

12. As to whether fixation of time for receiving nominations from the Competent Authorities could be considered as sanguine that any nominations

received thereafter could be withheld by the Government, needs little further discussion. The Rules do not prescribe any time limit for submission of

the nominations to the Government. It is only in the letter/circular issued by the Government that a month''s time was fixed for submitting

nominations by the Competent Authorities. The fact cannot be lost sight of that the Chief Secretary who was supposed to nominate the highest

number of candidates from amongst the authorities mentioned in Rule 10 i.e. 5 in number, infact, did not submit the nominations within the

prescribed time. A committee was constituted to short-list the number of candidates applying for the nominations. An ability test was prescribed

and the answer-sheets were required to be marked. Since the department of personnel was under the Chief Secretary, on that ground alone it

could not be said that his recommendations could be accepted as such though made after expiry of one month from the circular. In the very nature

of things, he could not make the selections of the nominations within the period of one month. If for certain reasons other competent authorities

delayed their nominations by few days, the same could not be treated as a lacuna in their nominations that the names of such candidates could not

be forwarded to the Public Service Commission. Thus, in the circumstances stated above, fixation of time in the circular Annexure P2 is not to be

treated as rigid to discard the nominations merely on the ground of some delay, although some time was required to be fixed for inviting the

nominations.

13. In the three cases referred to above, the recommendations made by the Ministers were discarded by the Government only on the ground that

the Petitioners secured their postings under such Ministers for a short span of time. It may be observed that the Ministers took over in the State of

Punjab on July 7, 1993 and under Rule 10 as the Competent Authorities competent to recommend nominee they i.e. the Ministers were required

to submit their nominations within a period of one month from the circular Annexure P.1 dated June 24, 1993. In the facts as stated above,

obviously the persons to be nominated by the Ministers worked under them for a very short span of time. It is immaterial as to whether the

Ministers had the occasion to see the work of the subordinates for a short span of time after they had taken over as Ministers or the candidates

worked under such Ministers for a short span of time, may be few days. Nomination would remain a nomination made under the Rules by the

Competent Authority and such nominations could not be ignored from consideration on such ground. An attempt was made in the written

statement filed by the State that these Petitioners manoeuvred their postings for the relevant period under the Ministers and their posting orders

were passed by the Joint Secretary, as such function of the State Government was to be performed up to Joint Secretary. It is futile to express any

opinion as to whether the ministerial staff or the bureaucracy (officers) or the political bosses/Ministers writ is to pervail. The fact remains that

under orders of the Minister posting orders were issued by the Joint Secretary and the Petitioners were so posted under the Ministers. Ultimately,

the Ministers made recommendations as per Rules aforesaid. It is useless to throw mud on the wings of either of the three functionaries referred to

above as is sought to be done in the written statement. Legally speaking there is no flaw in the recommendations made by the Competent

Authorities under the Rules and the Government acted arbitrarily and against the provisions of the Rules in withholding recommendations made by

the Ministers in the three cases re-referred to above.

14. In C.W.P. No. 829 of 1994, as already stated above Mr. A.S. Pooni, the senior most I.A.S. Officer working as financial Commissioner

(Appeals) recommended the name of Harbans Singh Petitioner which has been withheld by the Government. As demonstrated from the pleadings

as well as from Annexures P. 8 to P. 10, it is established that Shri Pooni was working as Financial Commissioner. Rule 10 of the Rules prescribes

Competent Authority who could make nominations. It is not mentioned in the Rules that the Financial Commissioner who was also included in the

list of Competent Authorities must work against a permanent post. If Shri Pooni was working against ex cadre post as Financial Commissioner

(Appeals), he did not cease to be the Financial Commissioner. He was fully competent to nominate. The stand of the Respondents is not

sustainable in law. The action of the Respondent-State to withhold the nomination made by Shri Pooni is against the Rules. The name of Harbans

Singh Petitioner is required to be sent to the Punjab Public Service Commission.

15. Finally reference may also be made on this point to the Division Bench decision of this Court in Darshan Singh Mohi v. State of Punjab and

Ors. 1991 (7) S.L.R. 211. The case related to nomination/appointment to Punjab Civil Services (Executive Branch). The nomination was made by

the Presiding Officer of the Sales Tax Tribunal. The nomination was ignored on the ground that the nominee was not working in the office of Sales-

Tax Tribunal nor in any office subordinate to it. The ratio of the decision is not helpful in deciding the case in hand. The nominee was working in the

rank of Superintendent in the office of the Financial Commissioner but that office was not held to be subordinate to the office of Sales Tax

Tribunal.

C.W.P. Nos. 10862 of 1993 and 390 of 1994:

16. The challenge in these two writ petitions is to the nominations of Respondents Nos. 3 to 7 by the Chief Secretary on the basis of ability test, as

referred to above. In view of the allegations made in the petition filed by Narinder Pal Sharma and others answer-sheets of the Petitioners as well

as Respondents Nos. 3 to 7 were produced by the Respondents and examined. A brief note of the examination of the answer-sheets was

prepared on March 23, 1994 and placed on the file of Civil Writ Petition No. 10062 of 1993. The same would show that the Petitioners can take

no advantage of certain interpolations in the marks of some of the candidates. Marks were not increased but factually were decreased. In fact no

cuttings were found in the answer-sheets of the three writ Petitioners namely Narinder Pal Sharma, Harjinder Singh Sodhi and Jagdish Chander

Bhatia. In the answer-sheets of two Respondents Nanak Singh and Jaspal Singh some alterations were noticed. Nanak Singh was allowed 5

marks in English question and 4Ã¯Â¿Â½ marks in Punjabi question. It could not be said that from 1 mark it was changed to 5 marks. There could be

only one indication at the most that from 7 marks they were reduced to 5 marks. With respect to other questions (Punjabi questions) there could

be 3 possibilities i.e. from 1Ã¯Â¿Â½. marks it was changed to 4Ã¯Â¿Â½ marks or (ii) from 7Ã¯Â¿Â½ marks changed to 4Ã¯Â¿Â½ marks or (iii) from 7 marks

changed to 4Ã¯Â¿Â½ marks. On reading of the answer-sheets it was observed that the candidates did not deserve 1 or 1Ã¯Â¿Â½ marks. No benefit could,

be derived from the other possibilities i.e. from 7 to 7Ã¯Â¿Â½ marks to 4Ã¯Â¿Â½ marks as the same was not going to help anybody. These possibilities

were ruled out. The Petitioners have thus failed to establish any ground that on account of interpolations in the marking of the answer-sheets this

Court could interfere in the matter.

17. This is a case where the Petitioners claim nomination by the Competent Authorities as of right. As briefly noticed above, there is a fine

distinction between nomination and selection and the principle enunciated in some of the judicial pronouncements cited on the question of selection

as such may not be applicable to the case in hand. In the process of selection for appointment or promotion the element of finding out suitable or

more suitable person is always there whereas at the stage of simple nominating a person for consideration of suitability, there is no principle

involved. It could pick and choose. There is no right as such vested in the Petitioners, if their names were not recommended by the Competent

Authority. Even in the matter of selection nobody can claim selection as matter of right. It is only the right for consideration. In Naib Subedar Babu

Lal Nagina v. The State of Haryana and Anr. 1992 (3) R.S.J. 1991. Division Bench of this Court, of which I was also a member, providing a test

for making selection for the post of more suitable candidate for the number of posts available out of the number of suitable candidates was held to

be valid. Some posts of Clerks were advertised by the Subordinate Services Selection Board. The posts were reserved for Ex-Servicemen

category. The Petitioners applied for the posts and participated in the written test. The selection of Ex-Servicemen was challenged. Since the

Petitioners had failed to secure the minimum marks in the test provided though they had participated therein, failed in the writ petition. As briefly

noticed above, the Petitioners participated in the ability test and failed to secure the requisite marks and were eliminated in the process. They

cannot be allowed to urge that provision of such test was illegal. In Shri Samual Phillip and others v. The Pout Graduate Institution of Medical

Education and Research, Chandigarh 1992 (3) R.S.J. 222, the writ petition was dismissed. No infirmity was pointed out in the selection process

completed by the Committee consisting of 4 members of the faculty of the Administrative Officers of the Post Graduate Institute of Medical

Education and Research. Similar view was taken in Raj Kishore Sharma and Ors. v. State of Punjab and Ors. 1993 (4) S.L.R. 12. It was held

therein that the Petitioner having participated in the selection process and having failed had no locus standi to challenge the selection. In the present

case it was argued that the Rules did not prescribe for holding the written test and after receipt of the nominations written test could not be

introduced. In support of this contention reliance has been placed on the Full Bench decision of this Court in Kamal Kumar Gwota v. State of

Haryana and Ors 1991 (1) R.S.J. 487. That was a case where short listing was to be done by the Sub-Committee constituted at a higher level.

The aforesaid Committee was to recommend the triple number of candidates i.e. 6, to be submitted to the Public Service Commission and the

aforesaid Commission was to finally select only two. After receipt of the official records Public Service Commission devised a new method of

selection in order to deprive the persons who could otherwise be selected on the basis of records. This criterion adopted by the Public Service

Commission after receipt of the recommendations was commented upon being arbitrary and with the purpose of depriving the most suitable person

otherwise to be found on the basis of records. The ratio of the decision aforesaid cannot be applied to the case in hand as the present case is at the

stage of only making nominations and not at the stage of final selection. Even in the absence of providing any ability test, it was open to the

Competent Authorities including the Chief Secretary to nominate anyone who was otherwise eligible. The principle of arbitrariness in the matter of

nomination may be there but that can hardly be a ground for quashing the nomination. Nobody has a right to claim nomination. It is only after

candidature of the duly nominated candidates are forwarded to the Public Service Commission that the process of selection of most suitable

person therefrom is to commence.

18. By providing a written ability test, no rule has been violated to call for any interference in the matter. In Dhan Kaur Hooda v. State of Haryana

and Ors. 1989 (2) R.S.J. 12, it was observed that in the absence of any criterion in the rules, the selection committee was held empowered to

devise any mode of selection i.e. selection on the basis of interview. The question of percentage of marks in written test vis-a-vis interview and viva

voce will not arise. The present two writ petitions aforesaid i.e. C.W.P. Nos. 10062 of 1993 and 390 of 1994 deserve to be dismissed.

C.W.P. 1463 of 1994

19. There are two Petitioners Prem Kumar Garg and Jasbir Singh Toor. The allegation of the Petitioners, briefly noticed above, is that their names

were recommended by the Minister for Tourism and Cultural Affairs,--vide Annexure P.2, and clarified,--vide note dated November 17, 1993;

that earlier he had recommended the name of Amarjit Singh Sethi and Prem Kumar Garg; that he was to recommend only one, the other

department would remain unrepresented and by relaxing the Rules both Amarjit Singh Sethi and Prem Kumar Garg be sent to the Public Service

Commission. In the written statement filed in para 6 it was stated that nominating authority made nomination of Amarjit Singh Sethi on July 6, 1993

on the next day i.e. July 7, 1993 the nomination of Prem Kumar Garg was cancelled. The Minister also nominated Paramjit Kaur from Register

''C'' on the ground that she was holding charge of two departments. It was observed by him that if only one person was to be nominated Prem

Kumar Garg''s name be included. In the case of Petitioner No. 2 Jasbir Singh Toor, as is apparent from Annexure P.3, the Finance Minister had

earlier recommended Jarnail Singh''s name and the second name recommended was that of Jasbir Singh Toor. Rule 10, as reproduced above,

clearly indicates that the Ministers were to recommend one person each. Only the first nomination made by the Minister could be held to be valid.

Such nominations could neither be unilaterally changed nor substituted. On behalf of the Petitioners it has been argued that since by relaxation of

Rules, as provided under Rule 28. the Chief Minister''s authority to recommend was increased from 2 to 4, similar action should be taken in the

case of Ministers who are holding under them more than one department. There is fallacy in this argument. When power to relax rule exists, it is

taken that in extraordinary circumstances this power may be exercised but it cannot be spelled out that where similar circumstances exists, resort

must be had to the provision ox Rule 28 for relaxing the Rules. The Court cannot substitute its opinion in place of the opinion of the State

Government who is the Competent Authority to relax the Rules. It may be a valid ground to relax the Rules to empower the Chief Minister who is

also a Competent Authority as provided under the Rules to make four nominations instead of two as originally provided but the Rules do not

contemplate that nomination from each department must be made by either of the Competent Authorities described under Rule 10. At the sake of

repetition it may be stated that the Competent Authority could recommend anybody either following any criteria or otherwise. Nobody could claim

nomination as a matter of right. In the present case the Petitioners could not claim nomination as a matter of right when the respective Ministers had

already made nominations. Under the Rules the Ministers had no right to add or substitute such nominations. Thus, this writ petition deserves to be

dismissed.

20. For the reasons recorded above writ petitions Nos. 15838 of 1993, 67 and 210 and 829 of 1994 are allowed with the direction to the

Respondents to forward their names which were duly nominated by the Competent Authorities under Rule 10, to the Public Service Commission

for necessary action. Writ Petitions Nos. 10062 of 1993. 390 and 1463 of 1994 are dismissed. No order as to costs.