

(2011) 02 P&H CK 0432

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ranbir Singh

APPELLANT

Vs

The Haryana State Co-Operative
Apex Bank Ltd and others

RESPONDENT

Date of Decision: Feb. 11, 2011

Citation: (2011) 164 PLR 477

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

Petitioner Ranbir Singh s/o Dhup Singh, has directed the instant writ petition, in the nature of mandamus, directing the Haryana State Co-operative Apex Bank Ltd. (respondent No. 1) and its officer to select and appoint him as Clerk in the Reserved Category of Ex-Servicemen/Backward Class and to quash the selection and appointments of private respondent Nos. 3 to 6.

2. Succinctly, the case set up by the petitioner, in brief, in so far as relevant, was that the respondent-bank advertised some posts of Clerks and Stenotypists (English) as the special recruitment for SC/BC/Ex-servicemen, vide advertisement dated 09.07.1990, appeared in the Tribune (Annexure P-1). In pursuance of the advertisement, petitioner applied for the post of Clerk in the category of Ex-servicemen as well as Backward Class. The respondent-bank was stated to have appointed 16 persons as Clerks (5 for General category, 5 for BC and 6 for SC) but no person belonging to Ex-servicemen category was selected and appointed. According to the petitioner, as he belongs to Backward Class and was also an ex-serviceman, so, he was entitled to be selected and appointed in either category, but the respondent-bank did not appoint him in this regard.

3. Levelling a variety of allegations and narrating the sequence of events, in all, according to the petitioner that since it was a special recruitment drive to recruit the candidates from reserved categories, so the respondent-bank ought to have appointed him (petitioner) in the reserved category, instead of selecting and appointing respondent Nos. 3 to 6 in general category. On the basis of aforesaid allegations, the petitioner sought his appointment as Cleric and quashment of selection/appointments of private respondent Nos. 3 to 6, in the manner, indicated hereinabove.

4. The respondents contested the claim of the petitioner. Respondent No. 1 filed its separate written statement, while private respondent Nos. 3, 4 and 6 filed their joint statement, inter alia, pleading certain preliminary objections of, maintainability of the writ petition and locus standi of the petitioner. The respondents pleaded that the petitioner had no right to claim his appointment. Only 11 persons (not 16 as pleaded by the petitioner) were stated to have been selected as Clerks, out of which, 6 were from reserved categories, 4 from backward classes and 1 was from ex-servicemen. No person from the general category was appointed. All the 11 persons belong to SC/BC/Ex-servicemen categories. The respondents claimed that private respondent Nos 3 to 6 were not given the appointments along with 11 other selected persons, in pursuance of advertisement (Annexure P1). It was explained that respondents Sushil, Raj Kumar and Ajit Singh applied, vide their respective applications dated 26.07.1990, 05.11.1990 and 27.07.1990 and they were appointed on 05.11.1990, 26.11.1990 and 30.10.1990 respectively. The selection of private respondents was stated to have nothing to do with the recruitment of the 11 persons appointed, in the wake of advertisement (Annexure P-1)

5. The private respondents also toed with the line of pleadings, contained in the written statement of official respondents. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal.

6. Controverting the allegations contained in the written statement and reiterating the pleadings of the writ petition, the petitioner filed the replication.

7. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant writ petition in this context.

8. As is evident from the record that the petitioner claimed that private respondents were selected and appointed amongst 16 candidates, as per advertisement (Annexure P-1) meant for special recruitment for reserved category. According to the official respondents that the private respondents were not selected/appointed, in pursuance of advertisement (Annexure P1), but respondents Sushil, Raj Kumar and Ajit Singh applied, vide their respective applications dated 26.07.1990, 05.11.1990 and 27.07.1990 and they were appointed on 05.11.1990, 26.11.1990 and

30.10.1990 respectively. It was claimed that only 11 persons (not 16 as alleged by the petitioner) belonging to SC, BC and ex-servicemen were appointed, in view of advertisement (Annexure P1). Meaning thereby, the petitioner has based his claim on altogether wrong facts and false basis,. Moreover, he has no legal right to be appointed, unless he was duly selected by the recruitment agency. In this manner, the contrary arguments on his behalf "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

9. Sequelly, there is another aspect of the matter, which can be viewed from a different angle. What is not disputed here is that the private respondents were selected and appointed in the year 1990 (more than 20 years ago) and since then, they are working on their respective posts. Therefore, to me, it would not otherwise be appropriate and in the interest of justice to dislodge the selected candidates/private respondents from their respective posts after a period of more than 20 years.

10. An identical question arose before the Hon"ble Apex Court in case H.C. Puttaswami and ors. v. The Hon"ble Chief Justice of Karnataka High Court, Bangalore and others, 1991 SLR 166, in which, it was ruled as under -

Having reached the conclusion about the invalidity of the impugned appointments made by the Chief Justice, we cannot, however, refuse to recognise the consequence that involves on uprooting the appellants. Mr. Gopala Subramanayam, counsel for the appellants while highlighting the human problems involved in the case pleaded for sympathetic approach and made an impassioned appeal for allowing the appellants to continue in their respective posts. He has also referred to us several decisions of this Court where equitable directions were issued in the interests of justice even though the selection and appointments of candidates were held to be illegal and un-supportable. 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 . The precedents apart, the circumstances of this case justify an humanitarian approach and indeed, the appellants seem to

deserve justice ruled by mercy. We take note of the fact that the writ petitioners also would be appointed in the High Court as stated by learned Advocate General of the State.

In the result, we allow these appeals and direct that these appellants should be treated to be regularly appointed with all the benefits of the past service. The judgment of the High Court is accordingly modified. This order would govern all those whose appointments have been quashed by the High Court.

11. Again, a Division Bench of this Court, in case *Shanti Devi and another v. State of Haryana and others*, 1999 (2) SLR 259 observed as under :-

Despite the above, we feel reluctant to interfere with the view taken by the learned Single Judge. The reason which compels us to do so is that the respondents have in fact continued on these posts for the last more than 15 years. In this situation, it would be extremely harsh to them and their families if they are now thrown out of service. They would have admittedly become overage for other posts. We are conscious of the fact that mere delay should not be a ground for putting a seal of approval on illegal appointments. Nor should such a concession encourage the Department to appoint ineligible persons in future. However, in the peculiar circumstances of this case and without intending to lay down a precedent, we choose not to interfere so as to avoid hardship to respondents No. 3 to 15.

12. The ratio of law laid down in the aforesaid judgments "*mutatis mutandis*" is applicable to the facts of the present case and is the complete answer to the problem in hand.

13. Thus, seen from any angle, to my mind, the petitioner is not entitled to claim any relief by means of present writ petition in this relevant connection.

14. In the light of aforesaid reasons, as there is no merit, therefore, the instant writ petition is hereby dismissed, in the obtaining circumstances of the case.