

Gurvir Singh Sidhu Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 6, 2016

Citation: (2016) 4 PLR 192

Hon'ble Judges: Mr. Rajiv Narain Raina, J.

Bench: Single Bench

Advocate: Mr. J.S. Gill, Advocate, for the Petitioner; Mr. Vaibhav Sharma, DAG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Mr. Rajiv Narain Raina, J. (Oral)â€”The short but interesting point raised in this petition relates to the tie-breaking rule adopted by the Punjab

Public Service Commission, Patiala (for short "the Commission"). The petitioner and the third respondent competed for appointment to the post of

Sub Divisional Engineer (Civil). They were both General Category candidates. At the beginning of the recruitment process, the existing tie-breaking

method in the Commission was made dependent on the marks scored in the viva voce test. For instance, where two candidates secured the same

marks in the written examination and the viva voce test, then the candidates who secured higher marks in the interview were given preference, and

failing which, the tie would be broken by age, the older taking precedence over the younger candidate. On 14th May, 2014, the Commission

decided to rationalise the formula as follows:-

In the event that the aggregate marks obtained in the written and interview parts of the examination taken together of two or more candidates are

equal, the candidate securing higher marks in the written part of the examination shall be ranked higher. Should the marks in the written part of the

examination of such candidates are still equal, the candidate older in age shall rank higher.

2. The tie-breaking rule was changed from stress on viva voce marks to those secured in the written part of the examination and if that did not

result in success to break the tie, the candidate older in age would rank higher in merit.

3. The written examination was held on 27th April, 2014 and the result was declared on 20th June, 2014 as displayed in the Official Website of

the Commission. The petitioner has lost out to the third respondent who has been selected and appointed as Sub Divisional Engineer (Civil). The

petitioner has approached this Court for issuance of writ of certiorari to quash the impugned decision of the Commission changing the rules of the

game when the game was being played out. A mandamus is sought to the respondents to appoint the petitioner to service being older in age than

the third respondent.

4. The first and foremost question that strikes the mind is that when the written examination was held on 27th April, 2014 could it then be imputed

in the mind of the Commission that it tailored the rule in favour of the third respondent as it knew the result of the written examination on 14th May,

2014 when the impugned decision was taken. It is common ground that the result was declared after ward on 29th June, 2014. In paragraph 5 of

the writ petition or elsewhere in the body of the petition, the petitioner has not raised this issue, though this Court permitted the issue to be argued

to satisfy itself on this angle. I think it too far-fetched to impute in the Commission that they had set about in the meeting held on 7th May, 2014 to

tailor the result to deprive the petitioner and unduly benefit the third respondent. If the decision taken on 7th May, 2014 was not actuated by mala

fides, corruption, nepotism or favouritism, then the decision is not open to criticism only because it was taken after the written test was conducted.

No such foundation has been laid in the petition to activate this Court to hold that the selection vis-a-vis the petitioner and the third respondent was

based on an extraneous consideration to give undue favour to the third respondent. There is no allegation of mala fide levelled against the

Commission or its members in the recruitment process of Sub Divisional Engineers. If the argument of Mr. Gill is to be accepted that in four earlier

recruitment processes, the viva voce method was followed then it does not mean that the Commission cannot change the tie breaking rule for all

times. The tie breaking rule has no reference to criteria of the selection. It is not a condition of eligibility. Its purpose is only to overcome a

contingency where two candidates secure the same marks. This is an event which may or may not happen. It is still a salutary rule which may be far

fairer in breaking the deadlock to evaluate inter se merit on standards achieved in the written examination and not leave the rule to the vagaries of

interview which part of the selection is more subjective and less objective than a written test normally is perceived. The Commission in paragraph 5

of the reply have explained the philosophy of the change over which is best put in the words of the Commission itself which read as under:-

It is further submitted that the above said decision was taken by the Commission in continuation of its earlier decision dated 3rd April, 2014 which

was to the effect that in case more than one candidate gets the same marks in his/her grand total, the same rule should be followed as has been

notified by the Department of Personnel in PCS Exam. However, there was mention of General Studies marks in those rules which were not

relevant for any other Group-A and Group-B posts, therefore, the Commission deemed it fit to modify the decision dated 3rd April, 2014 which is

more rational and appropriate.

5. Judicial review of a decision of the kind taken in this case by the constitutional body while testing its validity and correctness is very limited. So

long as the decision is not arbitrary, capricious and whimsical or in net result ends in diluting the standards of the selection then interference, in the

considered view of this court, is not warranted. The Commission may be right when it says that the modification of the tie breaking rule by the

impugned decision was thought more rational and appropriate to the object sought to be achieved. The Commission shifted the axis from interview

to the written examination to work the tie breaking rule more meaningfully and dispassionately. It is evident that the causa causans of the grievance

of the petitioner is that he secured more marks in the viva voce than the third respondent, but that is not enough to bring relief in this case when the

decision of the Commission is found far from arbitrary, unreasonable or discriminatory. I would, therefore, not it proper to interfere being a policy

matter within the jurisdiction of the Commission which has absolutely nothing to do with the eligibility criteria and therefore it cannot be said that the

decision deserves to be faulted only because it was taken after the written examination was held but before the final result was declared. The

modification of the old tie breaking rule was not designed or fashioned only to oust the claim of the petitioner nor can it be perceived as one

changing the rules of the game after play had begun. It was a decision uniformly cutting across board. I find lack of substance in the contentions of

Mr. Gill for him to succeed by quashing the appointment of the third respondent and replacing him with the petitioner. The petition is accordingly

dismissed.