

(2012) 04 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 6793 of 2011-H Alongwith Civil Writ Petition No. 4159 of 2009

Abhishek Dohroo

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Citation : (2012) 2 ShimLC 761

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : Ashok Sharma in CWP No. 6793 of 2011 and Mr. Sanjeev Bhushan in CWP No. 4159 of 2009;; for the Appellant; Ram Murti Bisht, D.A.G., for the Respondents No. 1 and 2/State and Mr. Inder Sharma, Advocate, for the Respondent No. 3/Board, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Karol, J.—Both these petitions were directed to be listed together in terms of order dated 19.12.2011. Identical questions of law are involved and as such they are being heard and disposed off together. However, mainly facts of CWP No. 6793 of 2011 are being referred to. On the asking of the State of Himachal Pradesh (Respondent No. 1), the Himachal Pradesh Subordinate Services Selection Board (Respondent No. 3) invited applications for selection of candidates to the posts of Trained Graduate Teacher (Non Medical). Process of recruitment, selection and recommendation continued for over a period of two years commencing from the year 2000. On 10.12.2002 respondent No. 3 recommended names of successful candidates for appointment to the said post. Names of both the petitioners figure in the said list. It appears that appointment orders, due to administrative constraints, could not be issued to the selected candidates. Certainly such reasons were beyond the control of the petitioners / successful candidates.

2. Subsequently in terms of letter dated 29.7.2003, respondent No. 1 took a

decision not to accept the recommendations made by respondent No. 3. In fact it cancelled the entire selection process. Allegedly the selection process was shrouded with suspicion of illegality/irregularity and the matter was entrusted to the Enforcement Department of the State for inquiry. What transpired thereafter is not on record.

3. However, on 30.1.2009, the Government of Himachal Pradesh constituted a Committee under the Chairmanship of Principal Secretary (Home) to examine cases of all the candidates in the light of the following reference:-

(a) Whether the illegalities committed in the selection of TGT (Non Medical) go to the root of the matter which vitiate the entire selection process and necessitated the State Government to order the cancellation of entire selection process.

(b) Whether on basis of evidence collected during the investigation it is possible to separate the innocent candidates from the tainted ones. If so, the Committee is requested to identify the tainted candidates in whose case there is a sufficiency of material collected, to enable the State Government to arrive at its satisfaction that in particular cases selection process was tainted and they can not be given appointments.

(c) To examine whether the candidates in whose cases there is no evidence or material against them, can their selection be said to be fair and transparent and can these be given appointment taking into consideration the findings recorded by the Vigilance Department.

4. After examining the entire record, this Committee submitted its report (Annexure P-1). It is seen that out of 247 candidates as originally recommended by respondent No. 3, names of only 224 candidates stand cleared who have since given appointment by respondent No. 1.

5. Names of petitioner Sh. Abhishek Dohroo and petitioner Sh. Nikka Ram were not cleared as this Committee found that marks given in the interview were disproportionate to the corresponding comments made in the remarks column of the selection list.

6. Since petitioner Sh. Abhishek Dohroo was not given appointment he approached this Court and vide judgment dated 18.10.2010 passed in CWP No. 3972 of 2009, titled as Sh. Abhishek Dohroo versus State of H.P. and others (Annexure P-3), this Court directed respondent No. 1 to examine the matter afresh.

7. Now in terms of the impugned order dated 15.1.2011, petitioner's representation (Annexure P-4) stands rejected, relevant portion of which is extracted as under:--

After examining the Board Sheets of all 247 candidates including the marks given in interview and comments written in remarks column, the Committee observed that in general the candidates categorized as "Much Below Average" and "Below

Average" have been awarded marks in the interview in the following range:-

(i) Much Below Average -- 2 to 10

(ii) Below Average -- 4 to 13.

It was also observed that in case of few candidates including the petitioner, marks given in interview are not in proportion to the remarks given in the remarks column and they have been awarded much higher marks than the marks awarded to other similar categorization. The Committee was of the opinion that in case of 9 such candidates gross irregularities have been committed while awarding marks in interview. The name of the petitioner also appears in the list of these 9 candidates as he has been awarded 18 marks in the interview.

During the course of hearing, the petitioner explained his stand in writing to show that the report of the Committee is not correct which is reproduced as under:-

(i) that my selection was never under cloud during investigation by expert investigating agency. It is only the Sub-Committee (Constituted under the said Committee) in June, 2009 that included my name in the list of candidates to be excluded.

(ii) That I have been given 18 marks out of 30 in Personal interview (i.e. 60%) and I have been a meritorious candidate although (Matric - 74.28%, +2 - 60%, B.Sc. - 65.6%). Therefore keeping in view my academic record, the Interview Board has rightly awarded me 18 marks out of 30.

(iii) While deciding merit, it is the marks and not the remarks which play any role and on the basis of marks I stand in the list of selected candidates.

(iv) From the perusal of the remarks column of said report, it is not clear as to what was the intention of interview Board to put such remarks as in some cases, the interview Board has given remarks like "Hard of hearing".

The above points raised by the petitioner are not tenable because the names of some of the candidates have not been excluded merely on the basis of investigation conducted by the Vigilance Department, but a High Power Committee examined the entire record pertaining to the selection process and found gross irregularities while awarding marks in the interview. A sub-Committee was also constituted under the Chairmanship of Director, Elementary Education was also constituted to assist the High Power Committee. The Committee had opined that some of the candidates including petitioner have been awarded disproportionate marks in the interview which created doubts. The other below average candidate had got marks between 4 to 13 whereas the petitioner was given much higher marks i.e. 18.

In view of above, it is clear that there appears to be irregularities in the selection process. Any wrong selection or selection of any tainted candidate means that a deserving candidate who should have been selected on merit has been left out.

Therefore, the plea of the petitioner to offer him appointment as TGT (NM) is not justified because of discrepancies in record and is hereby rejected.

[Emphasis supplied]

8. Hence the present petition.

9. Having carefully perused the record and considering the rival contentions of the Learned Counsel for the parties, I am of the considered view that action of respondent No. 1, in the instant cases is totally unsustainable in law. It is unreasonable, illogical and illegal.

10. Significantly matter of selection of candidates to the post in question was referred to the Vigilance Department of the State and nothing incriminating was found against the present petitioners. Further it is not the case of the State that petitioners, at any point in time, had ever tried to influence the decision making process, in the selection and recommendation of their candidature for appointment. It is also not the case of the State that petitioners had at any point of time resorted to unfair means. It is not a case where petitioners tried to gain employment to a public post by adopting illegal or unfair means.

11. The Government of Himachal Pradesh, in its wisdom and rightly so, constituted a Committee to examine cases on individual basis rather than en masse cancelling the entire selection process undertaken by respondent No. 3.

12. Significantly even this Committee did not come to the conclusion that petitioners had resorted to or adopted any illegal or unfair means/ methods during the process of selection/ recommendation of their candidature.

13. At this juncture it would be gainful to reproduce the relevant extract of the report of the Committee which dealt with the petitioners' cases:-

13. Committee examined the Broad Sheet of all 247 candidates recommended including the marks given in interview and comments written in remarks column. As analyzed by the Sub Committee in its Report that in general the candidates categorized as "Much Below Average" and "Below Average" has been awarded marks in the interview in the following range:-

(i) Much Below Average: 2 to 10

(ii) Below Average: 4 to 13.

Whereas in case of few candidates the marks given in interview are much higher against above similar categorization. In view of this committee is of the opinion that in case of following candidates gross irregularities has been committed while awarding marks in interview to candidates:-

S. No.

Roll No.

Name	Category	Marks given	Comment in Remarks Column	Total Marks
1.		14175	Sudershan Kumar	Gen. UR
		22		
		Much		
		129		
2.				
		14020	VivekRana	Gen. UR
		21		
		below		
		129		
3.				
		15071	Arvind Sharma	Gen. UR
		20		
		average		
		129		
4.				
		15308	Nikku Ram Thakur	Gen. IRDP

18

..Not legible

109

5.

14568

JagdishChand

SC. UR

18

He is hard

6.

13856

Pawan Kumar

Gen. UR

18

of hearing

101

128

7."

16120

AbhishekDohroo

Gen. UR

18

Below average

129

8.

14458

Virender Kumar

SC. UR

16

102

9.

14684

Rajeev Kumar

Gen. IRDP

16

117"

14. It is seen that petitioner's name was not cleared only for the reason that out of 30 marks for interview he was given 18 marks in spite of the fact that in the remarks column there is a note "below average". It is thus assumed that marks given for interview are highly disproportionate, as petitioner would have got anything between 4 to 13 marks, hence he ought not to have been selected on merit. Significantly none of the members of the Selection Committee were ever associated by this Committee before coming to the conclusion that the marks given to the petitioner for the interview were highly disproportionate to his ability.

15. It be only noticed that petitioner Sh. Abhishek Dohroo had obtained 74% marks in his matriculation examination; 65% in B.Sc. and 64% in B.Ed, examination. His academic ability and qualification, by no stretch of imagination and any standard, can be said to be below average. He constantly maintained a good academic record. It is also to be noticed that out of 30 marks in the interview, this petitioner was given only 18 marks which comes to 60% (approx) It would also be worth mentioning that respondent No. 3 had conducted a screening/written test in which out of 200 marks he had obtained 111 marks. Hence marks awarded in the interview certainly cannot be said to be disproportionate to his intelligence, ability or competence. Hence a note "below average" in the remarks column by itself cannot be a ground to oust him from the selection process.

16. It appears that this Committee has either not fully applied its mind or has dealt with the matter in a casual and perfunctory manner. It is apparent that in the case of petitioner Sh. Nikku Ram Thakur (Sr. No. 4), in the remarks column words written are "not legible", yet his selection has been held to be tainted.

17. Petitioner, Sh. Nikka Ram in fact is the person whose name stands mentioned at Sr. No. 4 in the report of the Committee. Simply because members of this Committee could not read the comments which they themselves found to be "not legible", they could not have come to the conclusion that he was much below average/below average and marks in the interview were awarded in excess of his capability, competence and intelligence. Significantly he belongs to IRDP category and even in the written examination he had obtained 91 out of 200 marks. Hence 18 marks out of 30 awarded to him for the interview cannot be said to be disproportionately excess of his ability.

18. Also whether these comments in the remarks column were actually that of

members of the Selection Committee or were inserted subsequently has not been verified by the new Committee. Who or for that matter which one of the members of the Selection Committee had inserted these remarks has also not been verified by this Committee. Hence under these circumstances, in relation to the present petitioners, it would be illogical, unjust, unfair and illegal on the part of respondent No. 1 not to accept the recommendations made by respondent No. 3. Also while arriving at its decision this Committee did not associate the petitioners.

19. Significantly petitioner Sh. Abhishek Dohroo was subsequently given appointment by the State itself. This is in relation to another selection process which was on contract basis. His services have been found satisfactory. In fact his name figures at Sr. No. 7 of the said selection list. Hence it cannot be said that petitioner Sh. Abhishek Dohroo is not meritorious or below average. In these circumstances petitions need to be allowed. Impugned report of the Committee to the extent it adversely affects the petitioners is quashed. Consequently order dated 15.1.2011 is also quashed with a further direction to the respondents to give appointment to the petitioners in terms of the recommendations made by respondent No. 3 and partly accepted by the State. No doubt petitioner Sh. Abhishek Dohroo is in a government job but it has affected his seniority vis-a-vis those candidates who stand appointed after their names were cleared by the Committee. Resultantly all consequential benefits shall flow in favour of the petitioners, except that they shall not be paid actual salary for the period for which they have not worked. Needful be positively done within a period of three months from the date of receipt of certified copy of the judgment.

In view of the aforesaid observations, both the petitions are allowed and disposed of. Pending application(s), if any, also stands disposed of.