
(2013) 09 P&H CK 0336
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14805 of 2004

Ashwani Kumar Mehta and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Punjab Civil Services (Judicial Branch) Rules, 1951 — Rule 7

Citation : (2014) LabIC 1105 : (2014) 1 SCT 438

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Sumeet Mahajan and Mr. Amit Kohar, for the Appellant; H.S. Brar, Addl. AG, Punjab for the Respondent No. 1, Mr. Arun Jain , Ms. Deepali Puri, Advocate for the Respondent No. 3 and Mr. D.S. Patwalia, Advocate for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to the notification published by the Punjab Public Service Commission (for short "the Commission") on 21.05.1999 (Annexure P-5) and consequently assigning seniority to respondent No. 4 - Tejwinder Singh over the petitioners. All the petitioners along with respondent No. 4 appeared in the Punjab Civil Services (Judicial Branch) Examination held in the year 1989, the result of which was declared on 03.07.1990. In the said result published in the Punjab Government Gazette on 14.09.1990, respondent No. 4 was placed at merit position No. 17. On 08.02.1991, all the petitioners as well as respondent No. 4 were appointed and assigned seniority in order of merit determined by the Commission.

2. The appointment of Members of Punjab Civil Services (Judicial Branch) is governed by the Punjab Civil Services (Judicial Branch) Rules, 1951 (for short "the Rules") as amended from time to time. In the year 1989, when the petitioners and Respondent No. 4 appeared in the examination, Rule 7 of Part-C contemplated that no candidate shall be credited with any marks in any paper

unless he obtains at least 33 per cent marks in it, whereas Rule 8 of Part-C contemplated that no candidate shall be considered to have qualified unless he obtains 45 per cent marks in the aggregate of all the papers. Such Rules were later on amended on 04.06.1991. The Rules as existed in the year 1989 and after amendment read as under:

The relevant extract from the result published in the Gazettee on 14.9.1990 is as under:

N.B.

(i) If a candidate obtains less than 33% marks in any paper, the marks in that paper are not counted.

(ii) If a candidate obtains less than 45% in all the written paper or less than 33% marks in the language paper i.e. Punjab (in Gurmukhi Script). He/she is not considered to have qualified.

(iii) If a candidate obtains less than at least 55% marks in the aggregate all the papers including viva voce test and 33% marks in the language paper of Punjabi (Gurmukhi Script). He/she is not considered to have qualified in the examination.

3. Respondent No. 4 continued to discharge his duties on the basis of merit declared by the Commission and on the basis of which, the appointment letters were issued to all the candidates. However, suddenly on 30.08.1997 i.e. approximately after 7 years of Gazette Notification, a letter was sent to the Registrar of the High Court intending to submit a representation to the Principal Secretary, Home and Administration of Justice Department, Punjab in respect of revising of merit in the Punjab Civil Services (Judicial Branch) examination result. A copy of the said letter has been produced by Mr. Patwalia as Annexure A-1. In the representation (Annexure A-2), respondent No. 4 submitted that marks of Criminal Law (Paper-III) have not been mentioned and counted in the total marks and that his performance in all the written papers was almost identical. It is contended that if the marks obtained by him in Criminal Law (Paper-III) are counted in the total marks, then he become senior to many Judicial Officers of his batch. It was, inter alia, mentioned as under:

(x) To my utter surprise the marks of my criminal paper-III had not been mentioned and counted in my total marks. I had appeared in the said paper which held on 16.12.1989 and had attempted all the paper upto my satisfaction. My performance in all the said written papers was almost identical.

xx xx xx xx

(xii) Since I was on the select list, therefore, I did not challenge it at that time and joined this service w.e.f. 15.02.1991. But now due to non-counting of my marks of criminal paper my seniority in my department has been greatly affected.

(xiii) In case the marks obtained by me in the criminal paper (Paper-III) are counted in the total marks, then I become senior to many judicial officers of my

batch.

(xiv) Therefore, now I request your good self to direct the PPSC to trace the said paper and marks sheet and the marks obtained by me be counted in the total marks obtained by me in the said competition and my seniority be adjusted accordingly. In case the said paper is not traceable then, I in that paper be awarded average of the marks obtained by me in other written papers. In other four written papers, I got 473 marks out of 700 marks as such the average comes to be 67.5. Since the criminal law Paper-III was of 200 marks, therefore, on the basis of average I may be awarded 135 marks in that paper and my seniority be adjusted accordingly.

4. Such representation was allowed to be forwarded to the State Government vide communication dated 09.09.1997 (Annexure A-10) by the Registrar of this Court. On such representation, the State Government sought comments from the Commission vide letter dated 16.09.1997 (Annexure A-11). It is on the basis of such representation, the Commission revised result of respondent No. 4 having obtained 101 marks in the subject of Criminal Law vide communication dated 06.01.1999 (Annexure A-12). Such communication was forwarded to the High Court by the Government of Punjab on 22.02.1999 requesting that rectification made by the Commission in the merit list may be effected in the gradation list. However, the Registrar of the High Court vide letter dated 26.03.1999 (Annexure A-14) communicated that unless the Commission corrects the merit list in accordance with Rule 8 of Part-C of the Rules and the Punjab Government republish the same as per Rule 10, the seniority of Shri Tejwinder Singh cannot be changed by this Court at its own level and thus, it was advised to follow the procedure laid down in Rules 8 and 10 of Part-C of the Rules after following the detailed procedure by inviting objections from the affected officers.

5. It is, thereafter, Punjab Government circulated communication dated 14.11.1999 to revise grading on the basis of marks given by the Commission to Shri Tejwinder Singh. Respondent No. 4 vide communication dated 10.11.1999 (Annexure A-15) sent the original letter meant for Mrs. Sukhvinder Kaur to the learned District & Sessions Judge, Hoshiarpur for her information. The said letter reads as under:

In regard to the subject mentioned above, I have the honour to submit that I had made a representation to the Punjab Government regarding refixation of my seniority on the basis of marks obtained by me in Criminal Law in P.S.C. Judicial Examination held in the year 1989. Now the Punjab Govt. has called objections from the affected officers. The objections have also been called from Mrs. Sukhvinder Kaur, PCS, who was earlier Civil Judge, Jr. Div., Dasuya. Since now she is posted at Ludhiana, therefore, the original letter, in which objections have been called from her is being sent alongwith the letter to the office of your good-self, with a request to forward the same to the officer concerned at Ludhiana, so that she may file objections, if she so desires.

6. It appears that even before the objections could be invited and considered, the State Government issued a letter to this Court on 23.07.1999 (Annexure A-17) for change in the seniority list placing respondent No. 4 below Shri Bal Krishan Mehta and above Shri Harjinder Pal Singh. The letter reads as under:

Please refer to your letter No. 11398 Gaz. II(3) dated 26.03.1999, on the subject noted above.

2. On the basis of the rectification of the marks made by the Punjab Public Service Commission, Patiala, the merit of Shri Tejwinder Singh, JMIC has been changed from Sr. No. 25 to Sr. No. 2. Accordingly, his seniority amongst the officers selected as a result of Examination held in 1989 is required to be changed. Now, in the Gradation List corrected upto 1st January, 1999 his name may be placed below Shri Bal Krishan Mehta and above Shri Harjinder Pal Singh at Sr. No. 10-A instead of Sr. No. 25. The necessary change in the seniority list may kindly be made under intimation to Government.

Yours faithfully,

Sd/- (A.S. Pannu) Joint Secretary Home (P)

No. 1/26/97-3JUDL(I)/1570 Dated, Chandigarh the 23.07.1999

A copy is forwarded to Shri Tejwinder Singh, PCS, (Judicial Branch) JMIC. C/o District & Sessions Judge, Hoshiarpur for information.

Sd/- Joint Secretary (Home)

7. With this background, the petitioners have challenged the changes effected in the merit list on the basis of which appointments were made to the service, inter alia, on the ground that upgrading the merit position of respondent No. 4 is without giving notice to the petitioners and that change in the merit position is barred by limitation, laches, estoppel and acquiescence and that seniority position cannot be upgraded without deciding their objections to the proposed change in the seniority position.

8. The petitioners have also averred that change in marks i.e. 0 to 101 has been effected during the period Shri Ravinder Pal Singh Sidhu was the Chairman of the Commission and that during his chairmanship irregularities and corruption in the Commission were widely highlighted in the Press and an FIR under the Prevention of Corruption Act was registered against Shri Sidhu and he was arrested. The State of Punjab cancelled various appointments in the Punjab Civil Services (Judicial Branch) and Punjab Civil Service (Executive Branch) as well as other services made during his tenure. It is also pointed out that no record or material has been shown to the Government or to this Court regarding the alleged mis-calculation of the marks of Criminal Law paper and that change of merit position is illegal and is liable to be set aside.

9. In reply, the stand of the Commission is that the representation of Tejwinder Singh was considered and the answer-sheet of Criminal Law Paper was verified

and it was found that respondent No. 4 had secured 101 marks out of 200 marks and that earlier award of "0" marks in the Criminal Law paper was a clerical mistake, which was detected and rectified on 06.01.1999 as per record. In respect of change of marks during the tenure of Shri Ravinder Pal Singh Sidhu, it was admitted that the rectification was made during his tenure, but the matter regarding selections/appointments made during his regime is under the judicial scrutiny, therefore, the matter being sub-judice, no reply was submitted.

10. In the written statement filed on behalf of respondent No. 3-High Court, it is mentioned that the representation submitted by respondent No. 4 forwarded to the Punjab Government under the orders of Hon"ble the Chief Justice.

11. In a separate reply filed by respondent No. 4 -Tejwinder Singh, it is submitted that he made a representation to the State Government through proper channel "to re-examine the paper of Criminal Law for the reason that he was sure that there was some mistake committed by the Commission in taking into consideration the marks secured by him in Criminal Law paper". It is further stated that the petitioners were informed vide letter dated 09.01.1999 about the change in the seniority list and the objections were called from the affected officers. The petitioners filed their objections and after taking into consideration such objections, the amended seniority list was issued. It is also pointed out that the writ petitioners were aware of the notification issued in the year 1999, but have challenged the same in the writ petition filed 5 years later and that no reasonable cause has been disclosed for inordinate delay in filing of the writ petition. It is asserted that he had nothing to do with Shri Ravinder Pal Singh Sidhu and that he is an outstanding student throughout. He also submitted that his previous performance proves the fact that such a promising and hard working candidate cannot be expected to score "0" marks. The petitioners also filed rejoinder and controverted the averments made by respondent No. 4.

12. We have heard learned counsel for the parties and find that the action of respondent No. 4 - Tejwinder Singh to seek re-examination of his answer-sheet of Criminal Law paper after 7 years of the declaration of result and after 6 years of his appointment is wholly untenable, illegal and lack bona-fides. Rule 7 of the Rules, as reproduced above, contemplates that if a candidate obtains less than 33 per cent marks, he shall not be given any credit of marks in the said paper. Rule 8 contemplates that if a candidate obtains 45 per cent marks in aggregate, he could be appointed. Obviously, the Rules were defective inasmuch as a candidate without qualifying a subject could still be appointed to service. Rules 7 & 8 were amended on 04.06.1991. But the grant of "0" marks to respondent No. 4 is based upon Rule 7, which provides not to grant credit of the marks obtained, if the total marks obtained are less than 33 per cent. The respondent No. 4 has been offered appointment even with zero credit. He never raised any dispute soon after the declaration of the result or any time before his appointment. As a matter of fact, the dispute was raised almost 7 years later and only to claim benefit of seniority. Such representation filed after 6 years of appointment lacks

bona fide. The categorical case of the petitioners is that the marks were revised when Shri Ravinder Pal Singh Sidhu was the Chairman of the Commission. Such fact is admitted by the Commission in its reply. The appointments made during the period of Shri Sidhu including in Judicial Services in the years 1998, 1999, 2000 & 2001 were quashed. Though certain Officers have been ordered to be reinstated by the Supreme Court vide judgment reported as High Court of Punjab & Haryana at Chandigarh v. State of Punjab & others 2010 (11) SCC 684, but the fact remains that in respect of Executive Officers, a five Judges Bench of this Court in Amarbir Singh Vs. State of Punjab and Others, has held that the entire selection process is vitiated. The said facts are stated only for the reason that the representation for revision of marks came to be filed after Shri Sidhu joined the Commission on 06.06.1996 as Chairman. The entertainment of representation at that stage by the State Government and the Commission raises enough eyebrows.

13. We also find that this Court vide communication dated 26.03.1999 observed that the Commission is to correct the merit-list and the Government to re-publish the result. It was further observed that the State should follow the procedure laid down in Rule 8 & 10 of Part-C of the Rules by inviting objections from the affected persons. Though in pursuance of such communication, notices were issued for change in the gradation list on 14.11.1999, but before that date, the change in the seniority list was effected by the State Government vide communication dated 23.07.1999 Annexure A-17. This Court has been, thus, mislead by the State so as to presume that the notices have been issued and opportunity of hearing granted to the affected persons. The categorical stand of the petitioners is that the representations (Annexure P-7 & P-8) have not been considered nor any opportunity of hearing was granted to them. There is no reply by the State as to whether any order has been passed even in the post decisional hearing process. Thus, the grant of opportunity of hearing by way of the notices to the affected persons was after effecting change in the seniority list. It speaks volume of arbitrariness and a pre-determined to grant benefit to respondent No. 4 though he has submitted representation after six years of his appointment.

14. This Court directed that the result be revised in terms of Rules and that the seniority list cannot be revised without giving opportunity of hearing to the affected persons. But without issuing notices, the State Government addressed a letter on 23.07.1999 for changing the seniority position of respondent No. 4, whereas the Commission published the notification dated 21.05.1999, impugned in the present writ petition. The notices were issued later on 14.11.1999. It appears that the State Government and the Commission have bended backwards to facilitate change in the merit position of respondent No. 4 in wholly untenable and illegal manner, so as to permit him seniority over other officers selected.

15. Apart from the fact that respondent No. 4 has accepted the marks granted to him before his appointment and not disputed the same for more than six years, we find that the Commission has no jurisdiction to revise the result on the basis

of a representation of a candidate after more than seven years of the declaration of result. The result and the merit position have attained finality and could not be tinkered with by the Commission on such dubious representation and under the guise of correction of clerical mistake. It has not explained that what kind of clerical mistake was sought to be corrected. We are firmly of the opinion that concluded rights on the basis of the result declared cannot be changed and that too after long delay. The mistake from a Constitutional Body, sole repository of conducting examinations to the Higher State services, reflects working of such institution. It is difficult to accept that it was a clerical mistake, which led the Commission to revise the marks granted to respondent No. 4 after 7 years of the Examination.

16. Mr. Patwalia, learned counsel representing respondent No. 4, relies upon a Single Bench judgment of this Court reported as *Jitender Kumar & another v. Haryana Public Service Commission* 2012 (4) SCT 283 as affirmed in appeal in LPA No. 1338 of 2012 titled "*Haryana Public Service Commission v. Jitender Kumar & another*" decided on 03.12.2012 as well as an order passed in CWP No. 25413 of 2012 titled "*Surinder Pal & others v. State of Punjab & another*" decided on 01.05.2013 to contend that mistakes in the examination process can be corrected by the Public Service Commission.

17. In *Jitender Kumar's* case (*supra*), the learned Single Bench was seized of the action of the Haryana Public Service Commission granting marks to the candidates with reference to wrong questions in the Haryana Civil Services (Executive Branch) and other Allied Services Preliminary Examination. It was argued that the Commission did not have the jurisdiction to award grace marks and, therefore, once such a mistake is found, the Commission had no option but to hold a fresh paper. It was under these circumstances, this Court observed that the first stage that is multi-choice questions in the preliminary examination is for the purposes of screening only and that the responsibility to conduct the preliminary examination and subsequently the main examination and personality test is upon the Commission and that even if there is no specific power conferred upon the Commission, it is not powerless to take appropriate steps/action as and when any such situation arises. The Court also found that the action of the Commission to delete the questions, which were found to be discrepant and granting marks to the candidates for the said questions, is justified as the paper was common to all the candidates and no prejudice has been caused to them. The letters patent appeal against such order remained unsuccessful.

18. In *Surinder Pal's* case (*supra*), the Commission came to the conclusion that six questions were wrong, therefore, in the absence of any negative marking, it was found that irrespective of the options, the result will be same on deletion of these questions or of granting of marks.

19. We find that the judgments referred to by Mr. Patwalia are of not helpful to the arguments raised. The power of Commission to correct answer keys of the preliminary examination as a whole is different than correction of marks of a

single candidate in the main examination more so after finalization of result and appointment of such candidate. If there is a mistake in the question paper, the Commission would have inherent powers to correct the mistake. But the evaluation of a answer-sheet having been completed in a particular manner cannot be open to scrutiny again after the declaration of result. If respondent No. 4 was sure about his marks, he should have made a grievance before his appointment or in any case soon after his appointment and in the absence of any response from the Commission, could have invoked the jurisdiction of this Court. But respondent No. 4 kept quiet for more than six years and suddenly woke up when Shri Sidhu became the Chairman of the Commission and the marks are increased to 101.

20. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, the Supreme Court held that permitting re-evaluation would lead to uncertainty regarding result of competitive examination for indefinite period of time and that such course shall be against public interest. Though Mr. Patwalia has sought to argue that it is not a case of re-evaluation, but a correction of mistake, but the fact remains that under the guise of correction of a mistake, the Commission cannot be permitted to re-evaluate the answer-sheet when neither there is any power or procedure for results to be revised in the scheme of examination and too after such a long delay. The bar to seek re-evaluation is equally applicable to the Public Service Commission as is applicable to the candidate. The Court held to the following effect:

28. As pointed out by a Constitution Bench of this Court in Fatehchand Himmatlal and Others Vs. State of Maharashtra, "the test of reasonableness is not applied in vacuum but in the context of life's realities". If the principle laid down by the High Court is to be regarded as correct, its applicability cannot be restricted to examinations conducted by School Education Boards alone but would extend even to all competitive examinations conducted by the Union and State Public Service Commissions. The resultant legal position emerging from the High Court judgment is that every candidate who has appeared for any such examination and who is dissatisfied with his results would, as an inherent part of his right to "fair play" be entitled to demand a disclosure and personal inspection of his answer scripts and would have a further right to ask for revaluation of his answer papers. The inevitable consequence would be that there will be no certainty at all regarding the results of the competitive examination for an indefinite period of time until all such requests have been complied with and the results of the verification and revaluation have been brought into account..

21. In a judgment reported as The President Board of Secondary Education, Orissa and Another Vs. D. Suvankar and Another, the Supreme Court held to the following effect:

5. The Board is in appeal against the cost imposed. As observed by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v.

Paritosh Bhupeshkumar Sheth case (supra), it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process..

22. In view of the above, we find that the revision of marks in Criminal Law paper of respondent No. 4 is wholly illegal, without jurisdiction, unjustified and arbitrary.

23. In respect of argument of Mr. Patwalia that the writ petition suffers from delay and laches, the petitioners have pointed out that the petitioners except Petitioner No. 4 were promoted to the post of Additional District & Sessions Judge on 20.05.2001, whereas petitioner No. 4 was promoted on 24.05.2002. The gradation list, in which seniority position of respondent No. 4, was upgraded was after the promotion of the petitioners except petitioner No. 4, but prior to promotion of petitioner No. 4. Respondent No. 4 was not promoted till the promotion of the petitioners, therefore, the change in the seniority position did not adversely affect them. But later respondent No. 4 led claim of seniority over the petitioners as Additional District & Sessions Judge on the basis of upgraded seniority, therefore, the petitioners have no option, but to invoke the writ jurisdiction of this Court.

24. We find that the objection that the writ petition suffers from delay and laches is wholly misconceived. The action of the Commission and the State Government in revising merit position of respondent No. 4 is without jurisdiction. Such action is in fact, a fraud on the entire process of appointment. Such action can be disputed at any point of time, when it affects the rights of other persons. The manner in which the Punjab Public Service Commission has revised result of a candidate after his appointment is fraught with danger and is full of mischief. Any candidate with some leverage after his appointment can tilt the balance in his favour under the guise of correction of mistake and score-march over his seniors by seeking to amend the merit list prepared. Such action cannot be permitted at any cost at any time. Consequently, while allowing the writ petition, we set aside and quash the revision of result vide communication dated 06.01.1999 (Annexure A-12); notification dated 21.05.1999 (Annexure P-5) and subsequent communication by the State Government dated 23.07.1999 (Annexure A-17) as without jurisdiction. The respondents are directed to assign seniority to respondent No. 4 - Tejwinder Singh as per the result declared on 03.07.1990.