
(2010) 04 P&H CK 0122
In the Punjab And Haryana At Chandigarh

Balraj, Suraj Bhan and Deepak and Others

APPELLANT

Vs

District and Sessions Judge and Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 4 SLR 773

Hon'ble Judges : Jaswant Singh, J; Hemant Gupta, J

Bench : Division Bench

Judgement

Hemant Gupta, J.—This order shall dispose of aforesaid three letters patent appeals arising out of order dated 6.4.2010 passed by the learned Single Judge in CWP No. 9142 of 2007. In the aforesaid writ petition, one Anil Kumar has challenged the selection and appointment of 14 Process Servers and 25 Peons made by the learned District & Sessions Judge, Rohtak in pursuance of the advertisement dated 16.2.2007 (Annexure P-3).

2. Vide the aforesaid advertisement, 14 posts of Process Server, 25 posts of Peon and 01 post of Sweeper were advertised to be filled up with the candidates having minimum qualification i.e. for the post of Process Server "Matriculation with knowledge of Hindi and Punjabi", for the post of Peon "Middle Class with knowledge of Hindi and Punjabi" and for the post of Sweeper "Middle Class". The candidates, whose names start with letters "A" to "J" were directed to appear for interview for the post of Process Servers/Peons in the office of the District & Sessions Judge, Rohtak at 9.00 AM on 2.4.2007; the candidates, whose names start with letters "K" to "P" were directed to appear at 9.00 AM on 3.4.2007; and the remaining candidates were directed to appear at 9.00 AM on 4.4.2007.

3. It is pointed out by the learned Counsel for the appellants that in pursuance of the advertisement, large number of applications were received i.e. 6325 for the posts of Process Servers, 5308 for the posts of Peons and 10101 for the post of Sweeper. Since large number of applications were received, the District & Sessions Judge, Rohtak resorted to short-list the candidates. Such process of

short-listing is explained in the written statement, which reads as under:

Preliminary submission:

2. That the respondent was required to fill up 14 posts of Process Servers and 25 posts of Peons out of almost a thousand times applicant. This task could not humanely be completed by holding interview of all the candidates. Therefore, it was decided after deliberation that candidates five times of total vacancies be short-listed. The committee of three officers and the other Judicial Officers, who were deputed to mark the attendance were required to give cursory look at all the candidates and prepare a list of the short-listed candidates, who could be interviewed to final their suitability. To arrive at this figure it was necessary to adopt an elimination process so that short-listing numbering all most five times of the total vacancies could be made for fair selection.

The procedure adopted for selection was neither arbitrary nor discriminatory. The answering respondent the members of Committee constituted for the purpose had no personal interest in any candidate in particular. The selection made by the respondent being fair and based on merits, no challenge to the same is maintainable in this writ petition. Therefore, the present writ petition is liable to be dismissed. On Merits:

5 & 6. The contents of paras 5 and 6, except to the extent these are specifically admitted, are denied being wrong and incorrect. It is denied that the selection process was a "sham transaction" as alleged by the petitioner. It is denied that there was any illegality involved in the selection. As per his own admission, the procedure followed by the respondent was adopted for all the candidates. Therefore, there was no arbitrariness or discrimination involved. The original records pertaining to selection process shall be produced before this Hon'ble Court at the time of hearing. The criteria adopted for making a short-list out of the total applicants was duly notified and displayed on the notice board. All the candidates were informed that after a "cursory observation about their over all personality and sensitivity towards cleanliness" a short list shall be prepared for the purpose of interview. The petitioner's name did not figure in this short list. The short listed candidates were interviewed and selection was made out of these candidates. The complete records about short listed candidates and the selected candidates shall be produced before this Hon'ble Court at the time of hearing.

(emphasis supplied).

4. The learned Single Judge vide the order impugned in the present appeals set aside the selection process after returning the following findings:

...Short-listing five times number of vacancies was made just by asking the candidates to mark their attendance and a cursory look at the face and personality of the candidates. Perhaps this is the strangest kind of method which has come to be adopted in the service jurisprudence so far for shortlisting of the

candidates and that too by a Senior Judicial Officer of the rank of District and Sessions Judge. By no yardstick or parameter, the procedure and method adopted can be said to be justified what to say of same being legally permissible in law. There cannot be more arbitrariness than adopted for short-listing of the candidates for selection. Even chattels cannot be selected by this method where the human beings have been short-listed by just looking at their faces. The entire selection process is totally farce and sham.

5. After returning such findings and considering the arguments that a writ petition on an earlier occasion, challenging the selection process has been dismissed, will not act as an estoppel, the learned Single Judge set aside the selection and directed the District & Sessions Judge, Rohtak to hold fresh selection amongst the candidates, who had applied pursuant to the advertisement dated 16.2.2007 by adopting a fair, rational and transparent mode of selection to be notified before the selection process is set in motion. It is the said order, which is subject matter of challenge in the present three appeals filed by the selected candidates.

6. During the course of arguments, learned Counsel for the appellants have produced certain documents purportedly obtained from the office of District & Sessions Judge, Rohtak under the Right to Information Act on 13.4.2010. Before we consider the respective arguments, some of the documents are important and the extracts therefrom are mentioned hereinafter.

7. On 29.3.2007, learned District & Sessions Judge, Rohtak passed the following three orders:

It has been resolved that all the applications received on or before 15.03.2007 be entered in the computer and arranged in alphabetical manner. The computerized statement be got bounded before 01.04.2007.

After deliberation, it has been unanimously resolved that only the candidates having the qualification of middle upto matric shall be allowed to appear for interview for the post of Peons. Rest of the candidates having higher qualification shall not be allowed for interview. It has further been resolved that while taking the interview of Peons, the following shall be observed, all the heads shall have 5 marks each:

1. Behaviour and General Aptitude.
2. Overall Personality.
3. Sensitivity towards the cleanliness.
4. Experience, if any.

The matter regarding the selection of Class-IV employees i.e. process-Servers, Peons and Sweepers was again discussed, after Superintendent of this office had informed that approximately 6325, 5308 and 10101 candidates are to appear on three dates i.e. 02.04.2007, 03.04.2007 and 04.04.2007, respectively. After

deliberation, it has been unanimously resolved that before short-listing the candidates for the posts of Process-Servers, Peons and Sweepers, assessment of overall personality and sensitivity towards cleanliness of the candidates shall be observed by the undersigned and Members/Judicial Officers at the time of marking their presence because it would not be possible to personally interview each candidate and only the short listed candidates shall be interviewed by the Committee.

8. On 02.04.2007, two members of Selection Committee namely S/shri S.S. Lambba and Shri A.K. Jain, Addl. District & Sessions Judges, Rohtak proceeded on leave for 2/3.4.2007, therefore, in order to complete the process of "interview of the candidates", Civil Judge (Senior Division), Rohtak, Addl. Civil Judge (Senior Division), Rohtak and Civil Judges (Junior Division), Rohtak were nominated as members of the Selection Committee consisting of the District & Sessions Judge, as Chairperson.

9. On the said date i.e. 2.4.2007 itself, another order was passed, which reads as under:

The Civil Judge, Senior Division, Additional Civil Judge, Senior Division and the Civil Judges, Junior Division, posted at Rohtak have personally brought to my notice that it would be quite difficult for them to individually interview all the candidates and therefore, they will mark their presence and personality of each candidate be assessed by the undersigned for the process of shortlisting the candidates for their recruitment to the posts of Process-Servers, Peons and Sweeper. They are thus directed to get the presence of the candidates marked in their presence and the undersigned will assess the personality of each candidate.

10. On 4.4.2007, learned District & Sessions Judge, Rohtak passed another order. The same reads as under:

I have individually assessed the personality of each candidate on 2nd and 3rd of April, 2007. Since both the Officers i.e. Additional District and Sessions Judge (I), Rohtak and Additional District & Sessions Judge, Rohtak (II), Rohtak have resumed their duties on 4.4.2007, they will also assess the personality of each candidate scheduled to appear on 4.4.2007 and thereafter the Committee constituted on 29.3.2007 comprising of the undersigned and the Additional District & Sessions Judge (I), Rohtak and Additional District & Sessions Judge (II), Rohtak shall carry out the work of shortlisting and the recruitment of the candidates for the posts of Process Servers, Peons and Sweepers. The work entrusted to the Civil Judge (Senior Division), Additional Civil Judge (Senior Division) and Civil Judge (Junior Division), Rohtak vide order dated 2.4.2007 shall be carried out by them.

11. The documents produced also contains a list of 125 candidates shortlisted for the posts of Peons, 73 candidates shortlisted for the posts of Process Server and 10 candidates shortlisted for the posts of Sweeper. Such candidates have been shortlisted on 2nd, 3rd & 4th of April, 2007 out of 5308, 6325 and 10101

candidates, who applied in response to the advertisement, respectively. The list so prepared does not disclose any methodology used even for shortlisting them on the basis of cursory look on their overall personality and sensitivity towards cleanliness i.e. it is not discernible as to how the shortlisted candidates were inter se judged with the candidates eliminated in such process.

12. It may be mentioned that for the one post of Sweeper, the record shows that 03 candidates have been selected out of 10 short-listed candidates. But since there is no challenge to any of the selected candidates appointed on the said post, we shall deal with such question subsequently.

13. Learned Counsel for the appellants have vehemently argued that large number of candidates have applied for limited number of posts, the criteria adopted by the learned District & Sessions Judge, Rohtak was fair and reasonable and has been applied uniformly in respect of all the candidates. There is no allegation of bias or favoritism, therefore, the writ petitioner has no cause to dispute the selection process, particularly when he has participated in the selection process. Reliance was placed upon a judgment of Division Bench of this Court in case of Sanjeev Kumar v. Selection Committee through District & Sessions Judge, Rohtak CWP No. 5585 of 2007 in respect of the selections upheld to contend that the Single Judge was bound by the Division Bench judgment and selection process could not have been interfered by the learned Single Judge. It is also argued that the judgment in Rajesh Kumar Gupta and Others Vs. State of U.P. and Others, has been wrongly relied upon by the learned Single Judge, whereas in a latter judgment reported as Sadananda Halo and Ors. v. Momtaz Ali Sheikh and Ors. 2008 (2) SCT 76 the Court has said that microscopic examination should not have been conducted by the High Court, when large number of candidates applied for the limited number of posts. It is emphasized that only one petitioner has felt aggrieved against the selection process and that he is estopped to challenge the selection process after participating in the same.

14. We have heard the learned Counsel for the appellants at some length, but do not find any merit in the present appeals. To state, at the least that the present is a shocking process of selection adopted by none else, but by a Judicial officer of the rank of District & Sessions Judge. Though large number of candidates have applied for limited number of posts, but the process of shortlisting could not have been resorted to in the manner done by the learned District & Sessions Judge, Rohtak. The process adopted, as disclosed in the written statement was to give "cursory observation about their over all personality and sensitivity towards cleanliness of candidates" for the purpose of short-listing. Such a criterion can only be termed as whimsical, irrational and wholly capricious. Even short-listing of candidates is permissible on the basis of a criteria which has to be rational, fair and reasonable and uniformly applicable to all the candidates without any possibility of arbitrariness and unfairness.

15. On 29.3.2007, the District & Sessions Judge, Rohtak, who is the competent

appointing authority has passed an order that while taking the interview of Peons, the following shall be observed, all the heads shall have 5 marks each i.e. (1) Behaviour and General Aptitude; (2) Overall Personality; (3) Sensitivity towards the cleanliness; and (4) Experience, if any. The order is not to short-list the candidates on the aforesaid parameters. Another order was passed on the same day i.e. 29.3.2007 that before short-listing the candidates for the posts of Process-Servers, Peons and Sweepers, assessment of overall personality and sensitivity towards cleanliness of the candidates shall be observed by the undersigned i.e. District & Sessions Judge and Members/Judicial Officers at the time of marking their presence because it would not be possible to personally interview each candidate and only the short listed candidates shall be interviewed by the Committee. Overall personality and sensitivity towards cleanliness are the two parameters assigned five marks in the order dated 29.3.2007 fixed for the purpose of interview, which eventually was conducted on 10.4.2007 and appellants selected out of the short-listed candidates. The process on 2nd, 3rd and 4th of April, 2007 was not of interview, but of short-listing the candidates. The competent authority has to shortlist the candidates on a criteria, which is certain, rational and not dependent upon the whims and fancies of an individual.

16. From the documents produced by the learned Counsel for the appellants during the course of arguments, we find that the findings recorded by the learned Single Judge warrant no interference, rather the documents support that such findings are correct in law. The learned Single Judge has recorded that even chattels cannot be selected by the method adopted, where the human beings have been short-listed by just looking at their faces. The learned Single Judge concluded that entire selection process is totally farce and sham. We find that it was the District & Sessions Judge, who carried out the process of short-listing on 2/3.04.2007 and the Committee on 4.4.2007. Even the cursory look of large number of candidates i.e. over 21000 candidates, appearing on three days, is physically just impossible. The short-listing could not be resorted to by merely marking them present and having a cursory look on candidates and further without even checking their documents. We find that the process of short-listing is a farce and based on the whims and fancies of the learned District & Sessions Judge. Such process is a fraud on the Constitution and Articles 14 and 16 have been followed only on its breach. It is a shame that a Senior Officer has adopted such process. The arguments raised by the learned Counsel for the appellants are untenable. Such arguments could be examined in case of irregular selection process, but not in a case in which entire process is vitiated by fraud. It is trite law to say that fraud vitiates all proceedings and vests no right in anybody.

17. The judgment of the Division Bench in Sanjeev Kumar's case (supra) in respect of selection process, dealt with only eligibility qua the qualification of the candidates. The question was whether the candidates should have the knowledge of Hindi and Punjabi or should have qualified such subjects in matriculation examination. It was held that knowledge of such subjects was sufficient. The

Court also considered that the petitioner having participated in the process of selection, must accept the principle that he has to swim and sink with the outcome of the result. Since the challenge was limited to the eligibility qua qualification of the candidates called for interview on 10.4.2007, the said judgment does not help the appellants in the present appeals. In the present case, the entire process of shortlisting the candidates has been found to be arbitrary, whimsical and vitiated by fraud. Therefore, the said judgment does not advance the case of the appellants in any manner.

18. The judgment in Sadananda Halo's case (supra) is not applicable, as there was no finding of mala fide exercise of powers or unreasonable exercise of power in the said case, as is evident in the present case. Even on facts, the issue involved is distinct.

19. In view of the above, we do not find any merit in the present set of appeals. The same are dismissed.

20. Faced with this situation, learned Counsel for the appellants have requested that the appellants should be allowed to continue on the posts till such time fresh selections and appointments are made. Since the appellants are beneficiaries of the fraud, we do not find any merit in the said request as well. They should be asked to vacate the post forthwith. The other request for relaxation in age is irrelevant, as the learned Single Judge has ordered the fresh selection from amongst candidates, who had applied in pursuance of advertisement dated 16.2.2007 and, therefore, their eligibility is required to be determined as per the aforesaid advertisement and on the basis of their earlier submitted applications.

21. We further notice that there was no challenge to the candidates, who have been appointed against the post of Sweeper. Since the entire selection process has been found to be vitiated by fraud, we deem it appropriate to take cognizance of such selection process suo moto and direct that notice be served upon the selected candidates through the learned District & Sessions Judge, Rohtak for 13.5.2010, as to why their selection to the post of Sweeper should not be quashed being void ab initio.

22. Let the matter be placed before the appropriate Bench after obtaining orders from Hon'ble the Chief Justice.