
(2010) 04 P&H CK 0191
In the Punjab And Haryana At Chandigarh

Devender Singh and Others	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 04 P&H CK 0191

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—The prayer in the present writ petitionis for quashing of the Order dated 18.07.2007 (Annexure-P-9), issued by respondent No. 1, vide which the representation made by the petitioners was rejected by respondents stating therein that the petitioners were to be considered against the vacancies, which were advertised under the quota of State of Himachal Pradesh as their parents were attached with Group Centre, Pinjore, and wards of such personnel were to be considered against the vacancies of H.P. State.

2. Counsel for the petitioner contends that the advertisement dated 07.04.2007 (Annexure-P-1), vacancies for the States of Punjab, Himachal Pradesh and Union Territory, Chandigarh, were advertised. The petitioners appeared before the Recruitment Board at Group Centre, Pinjore, as per the dates mentioned for each category and presented themselves for selection. The petitioners were considered against the vacancies of Punjab State and they participated in the selection process for the said posts. This he submits on the basis of selection process list, wherein after the initial test, the candidates were called upon to participate in the medical examination (Annexure-P-2 and Annexure-P-3). He on this basis contends that all through the petitioners were subjected to selection for the posts, which were advertised falling in the quota of Punjab State. After the completion of the selection process, the petitioners were placed in the order of their merit in their respective categories, but before the appointment letters could be issued to the petitioners, the candidature of the petitioners was not

considered against the post of Punjab on the ground that their claim for appointments could only be considered against vacancies, which were advertised for Himachal Pradesh State. He contends that this stand of the respondents is not sustainable, when the advertisement does not specify the condition, which has now been imposed for depriving the petitioners from their right of appointments to the posts advertised falling in the quota of Punjab State. His further contention is that at this belated stage, the respondents could not be allowed to take the stand of availability of the instructions dated 13.08.2001 (Annexure-R-2), which the respondents themselves did not follow during the selection process as is apparent from the selection process issued by respondents themselves. He submits that the selection process cannot be changed in the midst of the selection nor can there be any change in the criteria of selection during the process of selection, when the same has not been specified in the advertisement. In support of this contention, counsel for the petitioners relies upon the judgments of Hon"ble the Supreme Court in the cases of Secretary, A.P. Public Service Commission v. B. Swapna and Ors. 2005 (2) R.S.J. 704, and Maharashtra State Road transport Corporation and Ors. v. Rajendra Bhimrao Mandve and Ors. 2002 (LIndCas) 128. He has further contended that the petitioners have been deprived of their rights with a malafide intention to help a particular category of persons, who have been ultimately appointed. As regards instructions dated 13.08.2001 and thereafter, a clarification dated 20.04.2007 (Annexure-R-2 and Annexure-R-3), which have been made the basis for depriving their right of appointments to the posts, on which they were selected, he contends that the said instructions would apply to Constable (General Duty) only and would not be applicable to the posts against which the petitioners are seeking appointments. He contends that the petitioners have become overage and have no chance to apply anywhere.

3. On the other hand, counsel for respondents submits that the selection process has to be in accordance with statutory Rules and the instructions governing the selection. The petitioners are not domicile of States of Punjab, Himachal Pradesh or Union Territory, Chandigarh, and therefore, they do not have any right for consideration for the posts earmarked and falling in the quotas of these States unless the condition of domicile is waived off. The condition of domicile stands waived off as is provided in the instructions 13.08.2001 (Annexure-R-2). These instructions are not only applicable to the Constable (General Duty), but to Group "D" posts also and admittedly all the vacancies which were advertised and against whom the petitioners had also participated in the selection, fall in Group "D". She on this basis contends that instructions dated 13.08.2001 (Annexure-R-2) would be fully applicable to the petitioners and for being eligible to take the benefit of waiver off of domiciliary status/certificate, the petitioners have to fulfil the conditions and would be bound by the further conditions as specified in the said instructions. These instructions clearly state that the wards of the CRPF personnel, who are attached with Group Centre, would be eligible for waiver off of the domiciliary status/certificate with regard to the vacancies under which

those Units are to be considered. In the present case, it is not in dispute that the parents of the petitioners were posted/attached in Group Centre, Pinjore, and the wards of such parents are to be considered for enlistment against the vacancies of State of Himachal Pradesh. This position was clarified, vide instructions dated 20.04.2007 (Annexure-R-3), although, it does mention only with regard to the Constable (General Duty), but in the light of the basic instructions dated 13.08.2001 (Annexure-R-2), the same principle would be applicable to the Group "D" posts also. She contends that there was no change in the criteria during the selection process. The candidature of the petitioners was not rejected, but they were allowed to participate in the selection process for the reason that the vacancies of H.P. State were also available. The Presiding Officer of the Recruitment Board had some doubt with regard to consideration of the candidature of the petitioners and, therefore, he had sought clarification from the office of D.I.G.P., C.R.P.F. Chandigarh, wherein instructions dated 13.08.2001 (Annexure-R-2) was brought to his notice with a further clarification dated 20.04.2007 (Annexure-R-3). She on this basis submits that the claim of the petitioners had rightly been rejected for the reason that they could not come in the merit list against posts of Himachal Pradesh and, thus were not issued the appointment letters. She contends that instructions dated 13.08.2001 (Annexure-R-2) was always available and was to be applied to all cases where the waiver off of domiciliary status/certificate was to be applied as in the case of the petitioners and, therefore, no illegality has been committed by the respondents in not issuing the appointment letters to the petitioners as they were not found eligible against the posts, which was falling in the quota of State of Punjab. She on this basis prays for dismissal of the writ petition.

4. I have heard counsel for the parties and have gone through the records of the case.

5. Issuance of advertisement dated 07.04.2007 (Annexure-P-1) is not in dispute. It is also not in dispute that it is not specifically stated in the advertisement that who all would be considered and against which vacancy. However, selection process has to be conducted and the candidature has to be considered as per the statutory Rules and instructions issued from time to time by the Competent Authority in this regard. It is not in dispute that the instructions dated 13.08.2001 (Annexure-R-2) was already in existence when the advertisement dated 07.04.2007 (Annexure-P-1) was issued. It, therefore, needs no further consideration, but pointing out that the said instructions would be applicable to the case of the petitioners as well. The contention of counsel for the petitioners that the said instructions would not be applicable to the case of the petitioners cannot be accepted for the reason that the instructions itself clarify that it would apply to all Group "D" posts. At this stage, reference to the said instructions would be beneficial. The contents of the said instructions are as follows:

To Centpol Nwz All Polcents Including OPS NSR tpA Director ISA

Info All DIG including OPS all CGS including SGC

Ranchi All CTC RTCS SHS All Units including SDG signal FM DIG Pers.

No. R II 15/2001 PERS II 13/8 UNC

Domiciliary status for wards of CRPF persl. Wards of CRPF persl. can appear for rectt. of CT/GD either FM their home state or FM the state in which their parents are posted. They can also appear FM the CGS of the Units in which their parents are posted. In such cases the requirement of domiciliary status/certificate may be waived off. The same facility is now also extended to the wards of CRPF persl. for rectt. in the Group D posts also. Polcent NES only. In this connection YR SIG NO R II 14/2001 ADM II NES DTD 10.07.2001 may be referred to.

6. A perusal of the above instructions leaves no manner of doubt that firstly, the requirement was that a person must have a domicile certificate for consideration of the posts advertised. An exception has been carved out in the case of CRPF personnel, who are posted out of their home states. Wards of such CRPF personnel have been given the benefit of waiver off of domiciliary status/certificate by stating in the said instructions that they can also appear for selection at the places, where the Group Centre of the Units are located, where their parents are working. In the present case, it is not in dispute that the petitioners are not the domicile of the States, for which the vacancies were advertised. Therefore, they had to avail of the waiver off of domiciliary status/certificate. For being eligible for availing of the said waiver, the rider attached thereto would be applicable to the claim of the petitioners, according to which the parents of the petitioners, who are CRPF personnel, are posted in Group Centre, Pinjore, and, therefore, their candidature was to be considered for enlistment against the vacancies of State of Himachal Pradesh. That being the condition, the petitioners could not have been considered against the vacancies/posts advertised for the State of Punjab. So, in this view of the matter, the consideration of the claims of the petitioners in the selection process against the posts advertised for the State of Punjab by the Presiding Officer of the selection process does not confer any right on the petitioners on the appointment of vacancies/post for the State of Punjab. At the most, it can be said that the wrong selection process has been followed by the Presiding Officer, while considering the candidature of the petitioners against the posts of Punjab. It is not in dispute that the petitioners, when considered against the posts of Himachal Pradesh, do not fall within the merit of selected candidates and, therefore, they have no right for appointments on the said posts. Merely because they have been considered wrongly by the Presiding Officer of the Recruitment Board and that too under the bonafide belief that the interests of the petitioners may not be prejudiced by non consideration of the claims of the petitioners against the posts of State of Punjab for which clarification was sought by him, the petitioners were allowed to participate in the selection process would not confer right of consideration or appointment on the said posts. On receipt of the clarification from the higher authorities, when it was brought to the notice of the Presiding Officer on 06.09.2007 about instructions dated 13.08.2001 and 20.04.2004 (Annexure-R-2

and Annexure-R-3), the petitioners were not issued the appointment letters as they were not eligible for being considered against posts advertised for State of Punjab. Non issuance of the appointment letters to the petitioners is, thus, in consonance with law and, therefore, cannot be said to be in any manner conferring any right on the petitioners.

7. The judgments relied upon by counsel for the petitioners would not be of any help to the petitioners because in the case of Secretary, A.P. Public Service Commission (supra), the selection criteria was changed during the selection process by amending the rules, which Hon''ble the Supreme Court said could not be done rendering the candidate in-eligible during the selection process. Similar was the position in the case of Maharashtra State Transport Corporation and Ors. (supra), where again the criteria for selection was altered in the middle of the selection process and, therefore, Hon''ble the Supreme Court held the said rejection of candidature and selection invalid. The position in the present case is quite different. The instructions were always there and were to be applicable to the candidature of the petitioners. That being so, the claim of the petitioners cannot be granted. The order dated 18.07.2007 (Annexure-P-9), passed by respondent No. 1 is in accordance with law and, therefore, does not call for any interference by this Court.

8. Finding no merit in the present writ petition, the same stands dismissed.