
(2014) 04 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8543 of 2013 (O&M)

Gurdeep Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Citation : (2014) 176 PLR 17 : (2014) 3 SCT 337

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : G.S. Bal, Advocate for the Appellant; Pankaj Mulwani, Deputy Advocate General, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal, J.—The petitioner, who was an applicant for the post of Panchayat Secretary, has approached this court impugning the communication dated 1.10.2012, whereby his claim for reinstatement as Panchayat Secretary, was declined. Learned counsel for the petitioner submitted that the petitioner was appointed as Panchayat Secretary on 12.10.2001 along with more than 900 other candidates. As ultimately, it was found that the selection was bad on account of various reasons, the same was cancelled on 10.12.2002. Later on, the State engaged all the terminated Panchayat Secretaries on contract basis. As the petitioner was not reengaged, he enquired the reason therefore. He was informed that as on the cut-off date fixed for submission of application, the petitioner was under age, his appointment was cancelled on that ground. The date of birth mentioned by the petitioner was 17.8.1980 and the cut-off date being 1.9.1997. After the petitioner came to know about this fact, he moved Punjab School Education Board for correction of his date of birth, which was in fact 17.10.1976. His prayer was accepted and a corrected matriculation certificate mentioning his date of birth as 17.10.1976 was issued on 19.8.2007. For his engagement as Panchayat Secretary on contract basis, the corrected certificate was even got verified by the Department of Rural Development and

Panchayats from Punjab School Education Board, but still nothing was done. Thereafter, the petitioner got a legal notice dated 8.9.2012 issued to the respondents claiming reinstatement, however, vide communication dated 1.10.2012, the petitioner was informed that his claim had already been considered and information was sent vide letter dated 21.7.2008, therefore legal notice has been filed, whereas the aforesaid intimation was never received by him. The submission is that once the petitioner has got his date of birth corrected in the record with Punjab School Education Board and had produced a fresh certificate mentioning correct date of birth, he deserves to be offered appointment as Panchayat Secretary, as all other Panchayat Secretaries, who were appointed along with the petitioner initially and removed, were reengaged on contract basis and subsequently regularised.

2. On the other hand, learned counsel for the State submitted that finding bungling in the selection, F.I.R. was registered against the then Minister Incharge and the Members of the Selection Committee and all the Panchayat Secretaries were removed from service on 10.12.2002, however, later on in terms of the decision taken by the Council of Ministers, they were engaged on contract basis on 19.2.2004. For removal of the petitioner, additional ground was that on the date of appointment, he was under age. There were number of other candidates, who were removed on account of being below/above the prescribed age. The intimation of the decision earlier taken was given to the petitioner vide endorsement dated 21.7.2008, which has not been impugned. The cut-off date fixed in the advertisement was 1.9.1997. The date of birth mentioned by the petitioner being 17.8.1980, he was below 18 years of age on that date. It was further submitted that once at the time of initial appointment the petitioner had produced the certificate showing his date of birth as 17.8.1980, merely because he had got the same changed in the record with Punjab School Education Board more than five years after his removal, he cannot be permitted to raise a claim for his C.W.P. No. 8543 of 2013 [3] instatement in service. The claim is otherwise also highly belated for the reason that admittedly the petitioner was removed from service on 10.12.2002. The claim for re-engagement was to be made in the year 2008 and further the same having been rejected at that time, the writ petition was filed in the year 2013 when in response to a fresh notice got issued by the petitioner, he was intimated vide communication dated 1.10.2012 that his claim had already been rejected.

Heard learned counsel for the parties and perused the paper book.

3. The fact that when the petitioner filed application in response to the advertisement issued for selection to the post of Panchayat Secretary, he had mentioned his date of birth as 17.8.1980, is not in dispute. The same was mentioned in the matriculation certificate annexed by the petitioner. The minimum age for entry into service was 18 years. The cut-off date was 1.9.1997. Though the petitioner was not even 18 years of age on the cut-off date and he was not eligible to be appointed but still was appointed. This was not the only

illegality committed in the selection process as there were number of other illegalities and irregularities committed on account of which F.I.R. under the Prevention of Corruption Act was registered against the then Minister and Members of the Selection Committee. In the fact finding enquiry conducted by the then Financial Commissioner, Rural Development and Panchayats, Punjab, the following recommendations were made:

"(i) The primary responsibility for the entire bungling that occurred in the selection process rests with the then Minister Rural Development and Panchayats Sh. Nirmal Singh Kahlon under whose influence and directions the selection process was treated as one man's discretion.

(ii) Sh. Mandeep Singh, IAS, the then Director Rural Development and Panchayats along with Shri Pardeep Singh Kaleke, and Shri C.L. Premmy are the next personalities who consciously played into the hands of the then Minister for committing various irregularities pointed out in the report. Sh. Mandeep Singh is also responsible for not ensuring fair and impartial selection and also allowing excess recruitment with respect to BCs category, Handicapped category and Freedom Fighter category and less recruitment of SCs category, Ex.-servicemen Category and Sports persons category without seeking prior clearance from the concerned departments for less recruitment under reserve categories.

(iii) Sh. C.L. Premmy, Deputy Director, Panchayats was the officer Incharge for the receipt of the applications and the scrutiny. Subsequently, Sh. Pardeep Singh Kaleke and Sh. C.L. Premmy jointly shared this responsibility. Both of them are primarily responsible for non scrutiny of the applications at initial stage and preparation of authenticated record for subsequent comparison, which facilitated the subsequent manipulations under the direct influence of the then Rural Development and Panchayat Minister.

(iv) Sh. J.S. Kesar, IAS, the then Financial Commissioner, Rural Development and Panchayats is also responsible for not deputing the representatives of the Departments of Welfare, Ex.-servicemen and Freedom Fighters as Secretary in-charge. However, a perusal of the file shows that Sh. J.S. Kesar, IAS, marked the proposal given by Sh. Mandeep Singh, IAS, the then Director Rural Development and Panchayats for constitution of defective selection panels in routine to the then Minister Rural Development and Panchayats. Accordingly, it appears difficult to conclude as to whether it was a willful act of negligence or a routine submission of the file.

(v) Sh. Joginder Singh, Sh. J.P. Singla, Sh. C.L. Premy and Sh. Pardeep Singh Kaleke, Deputy Directors, who were the Chairmen of the Selection Committees along with other members of the Selection Committees are also responsible for committing the irregularities pointed out in the report, during the process of conducting interviews and finalizing the selection lists.

(iv) The then Additional Deputy Commissioners (Development) Bathinda, Ropar and Muktsar, who issued provisional Roll Numbers (0211015, District Bhatinda,

1308567, 1308610, District Ropar and 1507162 & 1507170 District Muktsar) to the candidates without obtaining the proof of Bank Drafts, as required under the instructions, are also responsible for the selections of ineligible candidates. The exact motive for committing serious irregularities in the selection process by all those responsible, as stated above, could be ascertained only through a thorough investigation by the Vigilance Department, as all these irregularities are actionable from criminal point of view under the law. Accordingly, it would be appropriate to entrust the case for subsequent action to the Vigilance Bureau, Punjab for taking action under the Prevention of Corruption Act. Simultaneously, disciplinary action regarding imposition of a major penalty under the Punishment and Appeal Rules, is also recommended."

4. All the selections of Panchayat Secretaries made during 1996-2001 were rescinded by the order of Governor of Punjab dated 10.12.2002 (Annexure P-1). The reasons assigned in the aforesaid order are:

"1) Due procedure was not adopted for the selection of Panchayat Secretaries belonging to reserve categories thereby creating backlog in the categories of SCs, Ex.-servicemen and Sports persons even though sufficient number of eligible candidates belonging to those categories were available for recruitment. Candidates belonging to other categories were taken excess of their due share.

2) The Departments of Welfare, Sainik Welfare and Sports were not associated for making selection for the reserve categories, mandatory for making any selection in any Deptt. as per Govt. instructions.

3) 909 posts were filled up against 700 posts advertised earlier in the press. However, the number of eligible candidates appearing for the interview were not proportionately increased thereby denying many of the meritorious candidates a chance of probable selection.

4) Candidates from districts like Gurdaspur and Muktsar were selected far in excess at the cost of other districts like Hoshiarpur, Jalandhar and Kapurthala thereby creating an imbalance in the districts.

5) Proper record was not maintained by the office while the possibility of the misuse of the bank drafts of one candidate for the other could not be ruled out.

6) 91 such candidates whose details like name, parentage, address and, in some cases even the date of birth was missing, were selected who otherwise should have been rejected at the initial stage.

7) Candidates got selected whose roll numbers alone figured in the interview list without any mention about their names.

8) In some of the cases, no proof of bank drafts was taken by the ADC's (Dev.) of the districts while issuing provisional roll numbers.

9) Some underage/overage candidates were selected. The services of 23 such candidates were terminated later on.

10) The recruitment was made in violation of the advice of LR. Even the verdict of the Hon'ble Supreme Court of India was ignored whereby interview marks could not exceed 15% while the written test should have carried 85% marks. In instant case, the written test was made only the qualifying test.

11) Candidates with higher qualifications namely, graduation/post graduation got ignored while 3rd division Matriculates were selected for reasons other than merit.

12) Computerized list was not prepared properly and gaps were left to manipulate the entry of candidates at a later stage.

13) 63 candidates were selected whose application forms were incomplete and should have been rejected at the initial stage.

14) Marks given to the SC candidates vis-a-vis general category candidates shows clear discrimination by the selection panels. As a result, none of the highly qualified and meritorious (B.A., B.S.C., B.Com., B.Ed., M.A., M.Ed. etc.) candidates could make it to the general category list whereas Matric 3rd division candidates belonging to general category were selected. Such type of discrimination is also there among the general category candidates themselves so as to favour some one at the cost of other.

15) The selections were made under the political influence instead of merit of the candidates ignoring the rule 3 of Punjab Panchayat Secretary (Recruitment and Conditions of Service) Rules, 1979, where the Minister Incharge of the department has no role to play except the approval to fill up the vacant posts."

5. The petitioner falls in the category of candidates, who were either under or over-age on the cutoff date. They were all removed in pursuance to the order dated 10.12.2002. As is pleaded in the reply filed, in terms of the decision of the Council of Ministers dated 19.2.2004, the Panchayat Secretaries were engaged on contract basis. The petitioner kept quiet as he was under age on the cut-off date. He filed an application to Punjab School Education Board for correction of his date of birth only in the year 2007. He had appeared in that examination in March, 1995. A corrected certificate, as has been produced on record (Annexure P-2) was issued on 19.8.2007. It is claimed that the petitioner had made a representation to the department concerned for his engagement on contract basis. As is evident from the letter dated 14.2.2008 (Annexure P-4) from Punjab School Education Board to the Administrative Officer, Department of Rural Development and Panchayats, the date of birth of the petitioner was certified as 17.10.1976. Thereafter, the petitioner kept quiet. He claimed that he got a legal notice issued on 8.9.2012, which was responded to vide impugned communication dated 1.10.2012. However, the fact remains that the claim of the petitioner already stood rejected vide order dated 21.7.2008, which was communicated to the petitioner. Even vide impugned communication dated 1.10.2012, this very information was given to the petitioner. The aforesaid factual matrix shows that the petitioner had submitted matriculation certificate

mentioning a particular date therein, in terms of which he was not eligible to be appointed and was removed on that ground in addition to the fact that the entire selection was cancelled on 10.12.2002, there being large scale bungling. Though other candidates, who had been removed along with the petitioner, were engaged on contract basis on 19.2.2004, but still the petitioner kept quiet. He pursued with Punjab School Education Board for correction of his date of birth in the year 2007 and had even got a corrected matriculation certificate dated 19.8.2007 and even claimed that he made a representation to the department immediately thereafter, but still has approached this court in the year 2013 impugning the communication dated 1.10.2012, vide which he has been intimated that the earlier his claim was considered and rejected on 21.7.2008. There is huge delay in the process.

For the reasons recorded above, I do not find any reason to interfere in the present petition. Accordingly, the same is dismissed.