
(2016) 07 P&H CK 0245
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1055 of 2016 (O&M)

Gurdhian Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

Punjab Civil Services Rules (Volume I) — Rule 2.40

Citation : (2016) 4 SCT 624

Hon'ble Judges : Surya Kant and Darshan Singh, JJ.

Bench : Division Bench

Advocate : P.S. Khurana, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Darshan Singh, J.—CM No.2181-LPA of 2016

This application has been moved by the applicants under Section 5 of the Limitation Act, 1963 for condonation of delay of 4 days in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the same is allowed and the delay of 4 days in filing the present appeal is hereby condoned.

LPA No.1055 of 2016 (O&M)

The present Letters Patent Appeal under Clause X of Letters Patent has been preferred against the judgment/order dated 12.5.2016 passed by the learned Single Judge in Civil Writ Petition No.22881 of 2014 whereby the writ petition filed by the appellants has been dismissed.

2. The appellants filed the civil writ petition for quashing the action of the respondents for declining to consider the candidature of the appellants in Register A-II and thereby declaring the result of screening test. It is further

prayed that considering the candidature of the appellants through Register-C for the process year 2008, 2012 and 2013 for the post of Punjab Civil Services (Executive Branch) (hereinafter called "the PCS(EB)") against Advertisement No.2 is illegal, arbitrary, discriminatory and unconstitutional. A direction has also been sought by way of writ in the nature of mandamus directing the respondents to consider the candidature of the appellants through Register-A-II in the process of selection against Advertisement No.2 (Annexure P-4), in the interest of justice along with other reliefs.

3. The appellants have applied against Advertisement No.2 dated 21.4.2014 for the post of PCS(EB) as per the Punjab Civil Services (Executive Branch) Rules, 1976. Appellant No.1 Gurdhian Singh is posted as Assistant Controller (Finance and Accounts) in the office of Financial Commissioner (Revenue). Appellant No.2 Preetpal Singh is posted as Deputy Controller (Finance and Accounts) with Medical College, Patiala. Appellant No.3 Balvinder Singh Matharoo is also presently posted as Deputy Director (Pension), New Pension Scheme, Department of Finance, Govt. of Punjab.

4. The grievance of the appellants is that their case has been wrongly considered through Register-C instead of Register A-II. It is alleged that on declaration of result of Screening Examination held on 6.7.2014, they came to know that their names have been considered under Register-C and not under Register A-II and resultantly, they filed Civil Writ Petition No.22881 of 2014. The same has been dismissed by the learned Single Judge vide impugned order dated 12.5.2016. Hence, this Letters Patent Appeal.

5. We have heard Mr. P.S. Khurana, Advocate, learned counsel for the appellants and have carefully perused the paper book.

6. Learned counsel for the appellants contended that the appellants have been wrongly considered in Register-C. They were entitled to be considered under Register A-II. He contended that appellant No.1 Gurdhian Singh has submitted the application form through Register A-II. His admit card was also issued for the same category but later on wrongly his category was changed to Register-C.

7. He further contended that all the three appellants fall within the definition of "ministerial employee" as they are performing the clerical jobs and are assisting the minister concerned. They are not exercising any administrative function. So, they are legally entitled to be considered in Register-A-II.

8. He further contended that the respondents have illegally considered the appellants in Register-C without affording them any opportunity of being heard. They should have been provided opportunity of being heard to explain that they fall in the definition of "ministerial employee" and were entitled to be considered in Register A-II. Thus, he contended that the action of the respondents and the impugned order passed by the learned Single Judge dismissing the writ petition are erroneous.

9. We have duly considered the aforesaid contentions.

10. As far as appellants No.2 and 3 namely Preetpal Singh and Balvinder Singh respectively are concerned it is not disputed that they have applied in Register-C. Their admit cards were also issued for Register-C. So, they are estopped to allege that they are entitled to be considered under Register A-II.

11. As far as appellant No.1 Gurdhian Singh is concerned admittedly, he has applied in Register A-II but after considering his case along with the case of appellants No.2 and 3, his case was forwarded by the Department in Register-C which is evident from the copy of the letter dated 6.8.2014 (Annexure R-1 in the writ petition). The learned Single Judge has categorically mentioned that Annexures A & A/T go to show that the Secretary of Finance (Treasury and Accounts Branch) had forwarded the cases of all the three petitioners along with 24 others, for consideration under Register-C. This factual position could not be disputed by the learned counsel for the appellants. Thus, it comes out that appellants No.2 and 3 have themselves applied for selection to the post of PCS (EB) in Register- C and case of appellant No.1 Gurdhian Singh was also forwarded by the concerned Department under Register-C.

12. The "ministerial employee" has been defined in Rule 2.40 of Volume-I Part I of the Punjab Civil Services Rules which is as under:

"2.40. Ministerial employee means a Government employee belonging to State Service, Class III, whose duties are entirely clerical and any other class of Government employees specially defined as such by general or special order of the competent authority.

Note- Those members of Class II service whose duties are predominantly clerical shall be classed as Ministerial."

13. As per the aforesaid Rule "ministerial employee" means a Govt. employee belonging to State Service Class-III whose duties are entirely clerical and any other class of Govt. employee specially defined as such by the general or special order by the competent Authority. Duties and responsibilities of SAS persons posted in various Departments of State Governments, PSUs, Corporations and Boards have been detailed in the letter dated 24.9.2014 issued by the Government of Punjab, Department of Finance (Annexure P-1 in the writ petition). It is not disputed that all the three appellants are SAS category officers. As per the duties expected to be performed by them mentioned in the letter dated 24.9.2014, they cannot be considered to be performing entirely the clerical duties. Learned counsel for the appellants has not been able to point out any material on record to show that the State Government or the Competent Authority has passed any special or general order describing the post held by the appellants to be the ministerial. Moreover, it is not for the Court to interpret whether a particular employee falls within the ambit of ministerial employee if otherwise not specified as such by the Competent Authority by a general or special order. A Division Bench of this Court in LPA No.1777 of 2014 decided on

3.11.2014 titled as "Mohinder Kumar v. State of Punjab and others" has laid down that whether a particular employee is to be categorized as a part of ministerial services or not, lies in the administrative decision of the State Government. So, no fault can be found with the action of the respondents in considering the cases of the appellants in Register-C.

14. This fact is also not disputed that the appellants have participated in the selection process in Register-C and when they became aware of the fact that they are not going to be selected, they started litigating for which they cannot be allowed to turn around and question the process of selection. Reference can be made cases Madan Lal and others v. State of Jammu and Kashmir and others, AIR 1995 SC 1088 and Manish Kumar Shahi v. State of Bihar and others 2010 (12) Supreme Court Cases 576.

15. Consequently, the findings arrived at by the learned Single Judge does not call for any interference. Resultantly, the present appeal is devoid of any merit and the same is hereby dismissed.