

(2020) 09 P&H CK 0173

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4057 Of 2019 (O&M)

Jasveer Singh

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 23-09-2020

Acts Referred:

Punjab Forest (Class II) Service Rules, 1985 — Rule 9
Constitution Of India, 1950 — Article 226, 227, 309, 315, 316, 320, 320(1)

Citation : (2020) 09 P&H CK 0173

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Alka Chatrath, Monica Chibber Sharma, Ajit Singh

Final Decision : Disposed Of

Judgement

Anil Kshetarpal, J

This writ petition under Article 226/227 of the Constitution of India, has been filed seeking issuance of a writ of certiorari, for setting aside the recruitment notice/advertisement dated 27.09.2018 (Annexure P-5), read with corrigendum (Annexure P-9), and other consequential reliefs.

In the considered view of this Court, the questions which need adjudication is:-

- 1) Whether it is permissible for Public Service Commission to evolve its own method of selection which is not in consonance with the Service Rules framed by the Hon'ble Governor under Proviso to Article 309 of the Constitution of India?
- 2) Whether the Chairman of the State Public Service Commission can individually/ exclusively take important policy decisions on behalf of the Commission which is a Multi Member organization, constituted under Article 315 of the Constitution of India?

The Punjab Public Service Commission issued a recruitment notice on 27.09.2018, inviting applications for 22 posts of Extra Assistant Conservator of

Forest in the Department of Forest and Wild Life Protection, Punjab. It was notified that applications can be submitted upto 18.10.2018. Thereafter, various corrigendums were issued clarifying certain doubts raised. During the pendency of Civil Writ Petition No.29207 of 2018, on 10.01.2019, the last corrigendum was issued, revising the requirements of minimum physical standards for male and female candidates while extending the period for submission of application to 22.01.2019. It was also notified that the competitive written examination shall be held on 17.02.2019. This writ petition was filed on 13.02.2019. It came up for hearing on 14.2.2019, before the Bench but was adjourned to the next working day. On 15.02.2019, a Coordinate Bench passed the following order:-

"Notice of motion.

On the asking of the court, Ms. Ishneet Kaur, AAG, Punjab, who is present in court, accepts notice on behalf of the State. She prays for some time to seek instructions and file reply.

Adjourned to 21.02.2019.

The process for evaluation may go on but result be not declared till the next date of hearing"

That the competitive written examination has been held during the pendency of the writ petition on 17.02.2019. Two separate written statements have been filed. One jointly by Respondent No. 3 and 4, whereas, another jointly by respondent No. 1 and 2 . A rejoinder to the written statement of respondent No. 3 and 4, has also been filed by the writ petitioner.

At this stage, it would be appropriate to notice that the Hon'ble Governor of Punjab, in exercise of powers conferred by proviso to Article 309 of the Constitution of India, has notified the Punjab Forest (Class II) Service Rules, 1985 (hereinafter to be referred as "the Service Rules of 1985"). Rule 9 whereof reads as under:-

"9. Recruitment to Service by direct appointment:- The recruitment to the Service by direct appointment shall be made in the following manner:-

(i) Firstly the candidates shall be selected by the Commission as trainees on the basis of educational qualifications, physical standard and written examination as specified in Appendix 'C' to these rules.

(ii) The candidates selected under clause (i), shall be deputed for such training for such period and at such places and at such institutions as may be specified by the Government from time to time:

Provided that the Government may exempt a candidate from the training if he has already undergone such training or any other training declared equivalent to such training by the Government.

(iii) After the completion of the aforesaid training, the successful candidates shall

be appointed to the service on the basis of merit declared by the head of the institution in which the training is given."

The appendix 'C' lays down the minimum requirements which a candidate is required to possess with respect to Educational Qualifications and physical standards. It also requires that written examination in various subjects and viva voce would be held for selection of direct recruits. Relevant part thereof is extracted as under:-

"3. Written examination: Written examination will consist of the following papers:-

(i) General Knowledge 100 marks

(ii) Essay in English 100 marks

(iii) Mathematics 100 marks

(Higher Secondary, Matriculation or equivalent standard)

(iv) Any two papers out of the following:-

Botany 100 marks each

Zoology The standard of the examination

Chemistry examination in these subjects will be

Mathematics that of a Bachelors degree.

Physics

Geology

Mechanical

Engineering

Civil Engineering

Chemical

Engineering

Agriculture

Statistics

? Viva Voce:- The candidates shall be required to appear for an interview before the Commission.

Note:- Ordinarily candidates will be selected by the Commission through an open competitive examination in the aforesaid manner but where the commission before inviting applications for training decides to select candidates through an interview only, the candidates for purposes of admission must possess at least

2nd class B.Sc. Or M.Sc., i.e., 2nd class graduate or a Master's degree of a recognized University or equivalent foreign qualifications and in case a University does not award classes, the candidate must possess at least 45 per cent marks in the aggregate."

As noted above, the recruitment notice was issued on 27.09.2018.

Clause 5 whereof is extracted as under:-

"5. COMPETITIVE WRITTEN EXAMINATION

The Commission shall hold Competitive Examinations for recruitment to these posts, details of which can be seen in the General Information for the candidates available on the website <http://ppsc.gov.in>

Important Note 1: The candidates MUST possess the requisite qualification before or by 18/10/2018 i.e. The last date of submission of Online Application Forms."

On the web site of the Punjab Public Service Commission, the following general information for the candidates was made available:-

"6.0 Competitive Examination

6.1 This is for information of the candidates who have to be applied for the posts of Extra Assistant Conservator of Forest in the Department of Forest and Wild Life Protection, Government of Punjab that competitive examination for recruitment to these posts shall be conducted.

6.2 The procedure for selection of candidates for the post of Extra Assistant Conservator of Forests, Department of Forest and Wild Life Protection, Punjab, will be in following sequence:-

(a) Written Test (170 question of 2 marks each-Total 340)

(b) Physical Criteria Test (Candidates need to qualify the minimum laid down criteria. There are no marks allotted for it).

(c) Interview 60 marks.

Note 1: The pattern for written exam comprising of 170 questions would be as follow:-

Subject

No. of Questions

Reasoning and Mental Ability

50

General Knowledge and Current Affairs

50

Mathematics (10th standard)

35

General English (12th Standard)

35

Note: 2 (a) Syllabi of Logical Reasons/Mental Ability,:

Logical Deductions

1. Deriving conclusion from passages.
2. Theme Detection
3. Cause of Effect reasoning
4. Logic
5. Statement- Arguments
6. Statement- Assumptions
7. Statement- Courses of Action
8. Statement- Conclusions

Verbal Reasoning

1. Analogy
2. Series Completion
3. Verification of truth of the statement
4. Situation Reaction Test
5. Direction Sense Test
6. Classification
7. Data Sufficiency
8. Alpha- Numeric Sequence Puzzle
9. Puzzle Test
10. Blood Relations
11. Coding-Decoding
12. Assertion and Reasoning
13. Arithmetical Reasoning
14. Operations of Mathematics
15. Venn Diagrams

16. Word Sequence
17. Missing Characters
18. Sequential Output training
19. Directions
20. Test on Alphabets
21. Eligibility Test

Non Verbal Reasoning

1. Dot situation
2. Identical figure groupings
3. Forming figures and analysis
4. Construction of squares and Triangles
5. Series
6. Analogy
7. Analytical Reasoning
8. Paper Folding
9. Paper Cutting
10. Cubes and Dice
11. Water Images
12. Mirror Images
13. Figure Matrix
14. Completion Incomplete Pattern
15. Spotting embedded figures
16. Classification
17. Rules Detection
- 18.

(b) Syllabi of General Knowledge and Current Affairs:

(a) General Knowledge and Current Affairs of National and International importance including:

- (i) Economic issues.
- (ii) Polity issues

- (iii) Environment issues
- (iv) Science and Technology
- (v) Any other current issues

(b) (i) History of India with special reference to Indian Freedom Struggle movement History of Punjab - 14th century onwards

6.3 For the purpose of short listing for interview, Candidates, fifteen times the number of posts (Based on their order of merit in written exam) shall be shortlisted for appearing first in the physical test of 25 km walk over road/track/kachha track/jungle track to be covered in four hours. This number may be subject to variation if two or more candidates at the last number (the number at the end) get equal marks, then all of them shall be considered for appearing in the physical criteria test (subject to availability). This may lead to corresponding increase in the stipulated ratio. After the walk test, the qualifying candidates will be checked for Height, Chest and 'Chest expansion' criteria.

6.4 The candidates qualifying the physical criteria out of short listed candidates shall be called for interview. In case, the commission finds the number of Candidates qualifying the physical criteria to be less than three times the Posts for each Category, the commission may call some more Candidates for physical Criteria tests for additional short listing, on the basis of written test merit (subject to the availability of Candidates in that category). The number of additional candidates to be called for physical criteria test would depend upon the anticipated qualifying ratio, to be decided by the Commission after observing the general physical fitness level of the candidates in the first test. This process of calling additional candidates for short listing may have to be repeated till the number of short listed candidates come up to the minimum laid down criteria, that is, 3 times the number of posts. However, such additional candidates (More than 3 times), who may qualify the physical criteria test, will not be called for Interview, even if they have qualified the minimum physical criteria. The upper limit for short listing will remain three times the number of posts in respective categories, exception being the candidates with equal marks at the bottom, who may be in addition to three times.

6.5. The physical criteria is laid down for qualifying purpose only. There are no separate marks for it. The candidates will be required to submit a Medical Certificate of physical fitness certified by a Government Hospital in the PPSC office, by due given date, that the candidate is not suffering from any medical problem and he is fit in all aspects to undergo a physical fitness test of 25 KM walk. A candidate, if he drops out of walk, for medical aid or any other reason including fatigue/medical problem, is not allowed to rejoin the physical test. The test is strenuous, therefore the Commission has no responsibility for any medical consequences of the physical test, which may be permanent damage to any organ/knees etc./accident with a moving vehicle or which may be 'death' for any reason. Therefore, the candidates need to ensure their adequate physical fitness

before participating in physical test. Candidate not appearing in physical test for the reason of 'sickness' or temporary unfitness or any other reason for being absent, will be considered 'failed'. Candidates will be required to carry their own water bottles. No eatables will be allowed to be carried/bought locally. Any violation of rule including attempt to take short cut/ride, will make the candidates 'disqualified'. The Commission's decision in all such eventualities will be final.

6.6. The interview shall carry 60 marks. The aim of the Interview is to assess the candidate's suitability for the job of Extra Assistant Conservator of Forests, in terms of his personal qualities and aptitude, by a Panel Interview. Final result shall be prepared on the basis of the grand total of the marks obtained by the Candidates in the Written Competitive Examination and the interview.

7.00 The salient features of the written competitive exam shall be as follows:-

(a) There will be no negative marking in the written test, for questions wrongly answered or questions not answered.

(b) After the answer key is put on the PPSC website (after written examination), candidates will be permitted to raise objections if any. Candidates will be given four days to deliberate before putting up objections. Any objection found 'frivolous' may draw negative marking, equal to the weightage of the question.

(c) The interview shall carry 60 marks. The aim of the Interview is to assess the candidate's suitability for the job in terms of his personal qualities by a Panel Interview

(d) Final result shall be prepared on the basis of the grand total of the marks obtained by the Candidates in the Written Competitive Examination and the Interview,

(e) The marks of written competitive examination obtained by the candidates or cut off marks for interview will not be disclosed at the time of short listing the candidates for interview, to avoid the same influencing the interview panel. However the complete details of written marks and interview marks will be available on the website of Commission after compiling the final result."

Learned counsel for the petitioner contended that the advertisement/recruitment notice is liable to be set aside as the written examination has not been held in accordance with the Service Rules of 1985. She while elaborating the same, contended that as per Appendix 'C', it is mandatory that competitive written examination will consist of five separate papers on five subjects, out of which, three would be of compulsory subjects namely General Knowledge, Essay in English and Mathematics (Higher Secondary, Matriculation or equal standard), each having 100 marks whereas two papers would be required to be opted from 11 optional subjects as provided in Clause 3 (iv). She further contended that the Public Service Commission could not violate the Service Rules of 1985. It was further submitted that State Public Service Commission is a Multi Member

Constitutional body and, therefore, the Chairman of the Commission could not take important policy decisions exclusively/individually. In support thereof, she places reliance on the judgment of the Supreme Court in *Ramjit Singh Kardam and others Vs. Sanjeev Kumar and others*, 2020 (AIR) Supreme Court 2060. It was further contended that academic and professional qualification in the field of Forestry, should have been kept in consideration, for recruitment to the State Forest Services. She placed reliance on the decision taken by various State Governments including the State of Karnataka, Tamil Nadu, Gujarat, Orissa, Kerala and the Union Territory of Jammu and Kashmir. It was contended that the aforesaid States have provided that Bachelors Degree in Forestry, would be an essential qualification for the post of Forest Rangers.

On the other hand, learned counsel appearing for the respondents, has contended that as per the Note given in the Appendix 'C', the Public Service Commission has the enabling power to entirely dispense with the requirement of holding the competitive written examination and select the candidates only on the basis of an interview. She contended that the Public Service Commission prior, to issuance of recruitment notice, evolved a method which is the combination of written examination as well as an interview. It was contended that the Commission raised the eligibility criteria to minimum of 2nd division with 45% marks, as provided in the Note and at the same time decided to hold a common competitive written examination for shortlisting candidates for the purpose of conducting the interview. It was decided that while calculating the final score, 85% weightage has been given to common competitive written examination whereas viva voce/interview would be of 15% marks. The syllabus for the common written test was designed to include the questions of three compulsory subjects, as enumerated in Appendix 'C'. Instead of holding separate examination for 2 out of 11 optional papers, 15 common questions of logical reasoning and mental ability, were incorporated in the common written test. It was pointed out that the Punjab Government has also done away with the optional subjects in PCS (Punjab Civil Services) Examination, since it creates unequal competition and the experience shows that it is better to hold a common competitive examination with the same syllabus for all the candidates, in order to give equal platform.

In the present case, final hearing of the writ petition was held through Video Conferencing in view of restricted functioning of the Courts due to the spread of COVID-19. Hence, learned counsel for the parties, were also permitted to file their written submissions through official E-mail of the Court. Learned counsels for the petitioner as well as the Senior Deputy Advocate General, Punjab, who represents the State of Punjab and Public Service Commission, have filed their respective written submissions.

This Court has considered the oral as well as written submissions of the learned counsel for the parties and with their able assistance gone through the paper book.

The Governor of Punjab has made and notified the Service Rules i.e. the Punjab Forest (Class-II) Service Rules, 1985. Such Service Rules are enforceable as statutory rules. Rule 9 lays down the procedure for recruitment to the service by direct recruitment. Appendix 'C', which has already been extracted, enumerates the minimum educational qualifications and minimum standard of physical fitness which candidates are required to possess. Clause 3 provides that every candidate shall be required to appear in five written papers of different subjects. It has been provided that competitive paper of each subject would be of 100 marks each. The 5 papers would be held for three compulsory subjects, namely General Knowledge, Essay in English and Mathematics (Higher Secondary/Matriculation or equivalent standard) and two optional subjects, as provided in Clause (iv), out of 11 subjects/fields enlisted therein. Each exam would be of 100 marks. In other words, every candidate has to appear in five written papers/exams of the subjects noticed above. Clause 4 provides that the candidate shall also be required to appear for viva voce before the Commission. From the reading of the written statement and the contentions of the learned counsel for the respondents, it is apparent that the Commission has evolved its own pattern of written examination. It has been provided in the general instructions that there will be only one written examination comprising of 170 questions. 35 questions each would be from the subjects of General Knowledge and Mathematics whereas 50 questions each would be from reasoning and mental ability as well as General Knowledge and Current Affairs. Thus, the pattern of written examination has been entirely changed. The question which requires consideration is whether it is permissible for the Public Service Commission to deviate from the Service Rules.

Union and State Public Service Commissions are constituted under Article 315 of the Constitution of India, which is quoted as under:-

"Article-315. Public Service Commissions for the Union and for the States. -
(1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question."

Further, Article 316 of the Constitution of India, provides that the Chairman and other members of the Public Service Commission shall be appointed for a period of six years from the date on which one enters upon his office or until he attains, in the case of Union Public Service Commission, the age of 65 years and in the case of State Commission or Joint Commission, the age of 62 years, whichever is earlier. The functions of Public Service Commission have been enlisted in Article 320 of the Constitution of India. For the purpose of decision of the present case, Article 320(1) of the Constitution of India, is relevant. It provides that the Union and the State Public Service Commissions are required to conduct examinations for appointment to the services of the Union and the services of the State, respectively. It is apparent that the Union and State Public Service Commissions have been assigned duty to conduct competitive examinations, select candidates and recommend their names. However, the Commissions have not been conferred with the powers to evolve their own pattern of holding examinations or interview, particularly, when there are Service Rules made under Proviso to Article 309 of the Constitution of India, to govern/occupy the field. Once the Service Rules provide for the manner and method of recruitment, in the considered view of this Court, the Commission has no jurisdiction to deviate or ignore the same. This aspect has already been examined by the Supreme Court in more than one decision. Reference in this regard can be placed on *Durga Charan Misra Vs. State of Orissa* (1987) 4 SCC 646, *State of Punjab and others Vs. Manjit Singh and others* (2003) 11 SCC 559 and (2004) 6 SCC 786 *Inder Parkash Gupta Vs. State of Jammu and Kashmir and others*. In the case of *Durga Charan Misra* (Supra), Munsifs for State Judicial Services were to be selected. The Public Service Commission took a decision to provide for cut off of 30% marks in a viva voce test which was not provided in the Service Rules. The Supreme Court after examining the provisions of Articles 320 and 309 of the Constitution of India and the Service Rules, held that the Public Service Commission has no power to provide for additional qualification and it has to faithfully follow the Service Rules. Similarly, in the case of the State of Punjab (Supra), the State Commission decided to hold a screening test with a view to shortlist candidates. It was ultimately held that the Commission could not make a provision for cut off marks, particularly when the Service Rules provided for addition of marks obtained in the viva voce and written examination. Similarly, in the case of *Inder Parkash Gupta*, (Supra), the Supreme Court held that the State Commission is bound to scrupulously follow the Service Rules.

In view of the aforesaid decisions of the Supreme Court, it can be concluded that the Union Public Service Commission is required to faithfully and scrupulously follow the Service Rules framed (The words borrowed from the judgments of the Supreme Court).

Now, the stage is set to examine the effect of the decision of the Commission. It is apparent that the Commission has drawn its own pattern of conducting written examination. Not only written examination of two optional subjects has not been held but even the pattern of holding examination in the subject of General English has also been changed. In place of Essay in English, the Commission decided to earmark 35 multiple choice questions to the subject of General English. Similarly, in place of question paper of 100 marks as was previously, questions of 70 marks have been assigned to the subject of Mathematics. Hence, the Commission has not held the examination in accordance with the Service Rules.

In view of the aforesaid facts, the arguments of learned counsel for the petitioner that the Commission has acted in violation of the Service Rules, is correct and hence, deserves to be accepted. This court does find that the argument of learned counsel for the respondents that in view of the Note appended to Appendix 'C', the State Public Service Commission has jurisdiction to evolve its own pattern of examination, can be accepted. The Note to Appendix 'C', no doubt enables the Public Service Commission to select the candidates solely on the basis of an interview, by taking a decision before inviting applications, however, the Note is in the nature of an Exception to what has been laid down in Clauses 3 and 4. Such Exception has to be strictly construed. While interpreting the Note, it would not be appropriate to hold that the Commission has power to evolve its own pattern of examination. In the present case, in fact, the Commission has never invoked what has been provided in the Note. The Commission has decided to hold written examination followed by interview (*viva voce*). However, the entire pattern of written examination has been changed from what has been provided in the Service Rules. The efforts of learned counsel for the respondents, to save the decision of the Commission on the basis of the Note, has failed to convince this Court. Hence, it is held that the Commission has not conducted the examination in accordance with the Service Rules. In view of the aforesaid discussion, question No.1 is answered in favour of the petitioner.

With regard to the second question, it may be noted that Article 316 of the Constitution of India, envisages that the State Public Service Commissions shall be a Multi Member body/organization. The Chairman of the Commission has not been given any extra/supervening powers with regard to selection of the candidates under Article 320 (1) of the Constitution of India. The Chairman of the Commission may have certain additional administrative powers for managing and regulating the day to day affairs of the Commission. However, the Chairman of the Commission cannot take important policy decisions at his individual level. Attention of this Court has not been drawn to any Rules enabling the Chairman to act on behalf of its members. Still further, it is not the case of the respondents that the remaining members had authorised the Chairman to take a decision on their behalf. Alongwith the written submissions filed by the learned State Counsel, a translated copy of the decision of the Chairman has been filed. It is apparent that the Chairman, at his individual level took a decision which, in

considered opinion of this Court, cannot be held to be decision of the Commission. In this regard, learned counsel for the petitioner has correctly relied upon the judgment of the Supreme Court in Ramjit Singh Kardam and others (Supra). While discussing point No.4, it was held by their lordship that the Commission, being a Multi Member Body, all decisions pertaining to the Mode of Selection and Criteria are required to be taken by the Commission itself. In view of the aforesaid, question No.2 is also decided in favour of the petitioner.

Learned counsel appearing for the respondents has pointed out that the petitioner cannot be permitted to approbate or reprobate. She contended that the petitioner has already appeared in the written examination held on 17.02.2019 and therefore, the petitioner cannot now be permitted to take of U turn and challenge the written examination held. There are two fundamental flaws in the argument of the learned counsel. First, the writ petition was filed before the petitioner was to appear in written examination. Second, there cannot be any estoppel against the statute. The Service Rules framed under Proviso to Article 309 of the Constitution of India, have statutory force.

Learned counsel for the petitioner has submitted that the State Government must prescribe a Bachelors degree in Forestry, to be one of the essential qualifications. In this regard, reference has been made to the Rules framed by various State Governments. This Court has considered the submission. However, it is for the State Government to take a decision on this aspect of the matter and it will not be appropriate for the Court to issue any writ in this regard. This aspect lies in the exclusive domain of the employer i.e. the State Government in the present case. Therefore, the petitioner if so advised, can file a representation to the State Government in this regard.

In view of the aforesaid, the writ petition is allowed and the advertisement/recruitment notice dated 27.09.2018, alongwith various Corrigendums issued are set aside.

All the pending miscellaneous applications, if any, are disposed of, in view of above-said judgment.