

(2019) 12 P&H CK 0204

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11489 Of 2018, 25397, 18448 Of 2014, 22436 Of 2015

Mahender Singh And Others

APPELLANT

Vs

Guru Jambheshwar University Of Science & Technology

RESPONDENT

Date of Decision : 07-12-2019

Acts Referred:

Citation : (2019) 12 P&H CK 0204

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : R.K. Malik, Kuldeep Attri, Subhash Ahuja, Naveen S. Bhardwaj, Shakti Kaushik, Ram Kumar Saini, Puneet Gupta, Birender Singh Rana, Nishant Chauhan, Roja Agnihotri, Arvind Seth

Final Decision : Disposed Of

Judgement

1. CWP No. 18448 of 2014 was filed by one Pawan Kumar assailing the selection of Mukesh Jangra, respondent No. 3 therein, to the post of Clerk-cum-Junior Data Entry Operator under BC(A) category in Guru Jambheshwar University of Science & Technology, Hisar. This challenge was on the ground that respondent No. 3 had secured 55.53 marks while the petitioner had secured 56.73 marks.

2. CWP No. 25397 of 2014 was filed by one Ashish assailing the selection and appointment of several persons, arrayed as respondent Nos. 4 to 41, to the posts of Clerk-cum-Junior Data Entry Operator under BC (A) category in Guru Jambheshwar University of Science & Technology, Hisar. His challenge was on the ground that the University had changed the criteria for selection mid-way, to his detriment.

3. CWP No. 22436 of 2015 was filed by one Rajesh Kumar assailing the selection of Mukesh Jangra, who was arrayed as respondent No. 3 in CWP No. 18448 of 2014, to the post of Clerk-cum-Junior Data Entry Operator under BC(A) category in Guru Jambheshwar University of Science & Technology, Hisar. His case was

that he had secured 56.40 marks while Mukesh Jangra had secured only 55.53 marks.

4. The above writ petitions pertained to the selections made by the University pursuant to Advertisement No. 2/10. While so, it appears that there were wide-spread protests regarding the manner and mode in which the University had undertaken the selection procedure pursuant to the aforesaid Advertisement. This resulted in an enquiry being initiated by the University through a retired Judicial Officer, Mr. Hari Ram, Sessions Judge (Retd.). Upon completion of the enquiry, the said Judicial Officer submitted Report dated 18.01.2018, wherein he pointed out various infirmities in the selections. He further stated that the main fault was attributable to the Core Committee in this regard and that the same had resulted in vitiating the whole selections. He however concluded his report by mentioning that the persons appointed pursuant to such selections had been in service for quite some time and that it was for the University to decide about its future course of action. The aforesaid Report was placed before the Executive Council of the University in its 79th meeting held on 03.02.2018. The Executive Council resolved that the said report should be accepted and directed that further necessary action be taken by obtaining a legal opinion.

5. Aggrieved by this development, 35 Clerks-cum-Junior Data Entry Operators, who were appointed pursuant to the selections in question, filed CWP No. 11489 of 2018 assailing the Executive Council's Resolution dated 03.02.2018. Their main grouse was that neither the Enquiry Officer nor the Executive Council of the University afforded them a hearing before taking a decision in the matter.

6. The operation of the Executive Council's Resolution dated 03.02.2018, insofar as it pertained to acceptance of the Enquiry Report, was stayed by this Court, vide order dated 08.05.2018 passed in CWP No. 11489 of 2018.

7. Thereafter, by order dated 12.04.2019, these four writ petitions were clubbed together for joint hearing.

8. Mr. Puneet Gupta, learned counsel for the respondent University, would contend that as the Executive Council had merely directed action to be taken on the strength of the Enquiry Report, there was no cause for the petitioners in CWP No. 11489 of 2018 to approach this Court and stall the process at this stage. He would assert that the University would issue show-cause notices in the event it proposes action against those appointed pursuant to the selections in question and that the principles of natural justice would be adhered to before taking any adverse step.

9. Per contra, Mr. R.K. Malik, learned senior counsel appearing for the petitioners in CWP No. 11489 of 2018, would argue that once the Executive Council of the University, being its highest administrative body, resolved to accept the Enquiry Report, wherein various infirmities were held established, the process of issuing show-cause notices to the appointees would only be for the purpose of paying lip service to procedural formalities and that a hearing at that stage would be futile

and meaningless. He would rely upon the Division Bench judgment dated 25.04.2005 of this Court in CWP No. 6241 of 2005 and batch, titled 'Pawan Kumar v. State of Haryana'. A copy of the common order dated 25.04.2005 is produced. Perusal thereof reflects that the Division Bench opined that issuance of show-cause notices after the decision was taken would amount to clear breach of the rules of natural justice.

10. It is an admitted fact that the Enquiry Officer, Mr. Hari Ram, Sessions Judge (Retd.), did not afford an opportunity of hearing to any party who would be affected by his decision, one way or the other, before recording findings as to the infirmities in the selection process. He, however, ended by pointing out that the persons so selected and appointed had been in service for a long time and left it to the University, in its wisdom, to take a call. Significantly, the Executive Council of the University did not even advert to this concluding portion of the Enquiry Report while blindly resolving to accept it and directing action to be taken after obtaining legal opinion. The said Resolution clearly indicated the intent of the Executive Council. The process thereafter, including issuance of show-cause notices to the affected parties, would therefore constitute going through the motions so as to adhere to procedural formalities. In effect, none of the affected parties, one way or the other, would ultimately have an opportunity of participating in this decision-making process.

11. Be it noted that not only the petitioners in CWP No. 11489 of 2018, being the beneficiaries of the selections, but also the petitioners in the other three cases, who allegedly lost out during the said selections, had an equal right to have their say in such decision making. It would have therefore been appropriate for the Executive Council to give them all an opportunity of being heard before taking a decision on the Enquiry Report.

12. In that view of the matter, the Resolution dated 03.02.2018 passed by the Executive Council of the respondent University is set aside. The matter shall be considered afresh by the Executive Council after submission of written objections and representations by all the petitioners in these cases in relation to and in the context of the Enquiry Report dated 18.01.2018. Though there may be several others who would be equally affected by the decision to be taken by the Executive Council, it may be noted that they have not chosen to agitate their grievances, if any, by coming before this Court. They would, therefore, not be entitled to have their say before the Executive Council at this stage. Only the writ petitioners in these four cases would be entitled to such benefit. They shall accordingly submit their written objections/representations vis-à-vis the Enquiry Report dated 18.01.2018 within two weeks from the date of receipt of a certified copy of this order. Thereupon, the Executive Council of the respondent University shall take into consideration all such written objections/representations and take a decision afresh on the said Enquiry Report.

13. The writ petitions are disposed of accordingly.

14. In the circumstances, there shall no order as to costs.