

(2013) 07 P&H CK 0826

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No"s. 8837 and 14316 of 2013

Manish Bansal and Others

APPELLANT

Vs

PSPCL and Others
 Vikas and Others Vs The State of
Punjab and Others

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 07 P&H CK 0826

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : Adarsh Jain in CWP No. 8837 of 2013, Mr. Harish Goyal in CWP No. 7950 and 7968 of 2013, Mr. Sameer Sachdeva in CWP No. 13276 of 2013, Mr. Vijay Kumar Jindal in CWP No. 14316 and 16499 of 2013 and Mr. R.S. Randhawa in CWP No. 14844 of 2013, for the Appellant; Girish Agnihotri and Mr. Saurabh Gulia, Advocate Respondents No. 1 and 2, Mr. Arun Nehra, Advocate for Respondent No. 3 in CWP Nos. 8837, 13276 and 14844 of 2013, for the Respondent

Judgement

Mahesh Grover, J.—This order will dispose of the above-said seven writ petitions bearing CWP Nos. 8837, 7950, 7968, 13276, 14316, 14844 and 16499 of 2013 as they involve commonality of facts and convergence of grievance of the numerous petitioners arrayed in the memorandum of parties. All of them are aggrieved of the decision of the Punjab State Power Corporation Limited (for short referred to as "PSPCL" and hereafter referred to as the Corporation).

2. The respondent-Corporation issued an advertisement in the year 2012 for filling up posts of Assistant Engineers, Junior Engineers, Accounts Officers, Upper Division Clerks (hereinafter UDCs) etc. Insofar as the posts of Assistant Engineers are concerned, the advertisement solicited applications from various streams of engineering such as Electrical, Mechanical, Instrumentation and Control, Electronics and Communication, Civil and similarly for the posts of Junior Engineers also, applications were solicited likewise. The number of posts that

existed against each of the categories was also indicated.

3. The petitioners applied as did others and evidently they were called to take the written examination. The date prescribed for examination for the post of Assistant Engineers and UDCs (General) was 15.7.2012 and for the posts of Junior Engineers and UDC (Accounts) was again 15.7.2012 but in the noon session. The written test was to be conducted at the three assigned Centres i.e. in Chandigarh, Jalandhar and Patiala. Written test was taken by the petitioners and other aspirants on the date prescribed and as per the Centres allotted.

4. The written test was of 100 marks, out of which 60 marks were reserved for the questions regarding technical aspects and 40 marks for non-technical category i.e. general awareness etc.

5. On 16.7.2012, widespread activities of unfair means being used in the examination, which were concluded a day before, was reported. It was alleged that mass copying has resulted from the use of technology by sending SMS/MMS thereby casting a shadow on the fairness of the examination.

6. The respondents in the meantime prepared a combined merit list of the qualified candidates, who appeared for selection for the posts of Assistant Engineers, Junior Engineers and UDCs, which was declared on 25.7.2012.

7. All the petitioners claimed that they were selected in the process and placed at various points in the merit list. They were, thus, asked to come for the next stage of process for appointment by reporting to the Authorities on 2.8.2012 with the necessary documents to support their credentials. But before this, CWP No. 14036 of 2012 was filed titled as Major Singh vs. Punjab State Power Corporation Limited.

8. The said writ petition cruised along with numerous interim orders being passed during the course of its hearing, noticing essentially the parameters of the controversy. In the writ petition, a prayer has been made for cancelling the entire examination and holding the process afresh in a transparent manner. In one of the orders of this Court dated 20.2.2013, the Court observed that "the respondent-PSPCL" is at liberty to pass any order in consonance with the averments made in para 5 of their affidavit. It may not be out of place to mention here that in the affidavit filed by the Corporation, they had highlighted the urgency to fill up these posts on account of the pressing nature of works that were to be undertaken by them.

9. For the purposes of reference, the contents of the affidavit are extracted herein-below:-

That vide orders dated 8.8.2012, this Hon''ble Court granted time to the respondent No. 1 for verifying the allegations. Relevant part of the said order dated 8.8.2012 is reproduce hereunder for the kind perusal of this Hon''ble Court:-

He seeks time to verify the allegations and apprise the Court as to the source from where the aforesaid question paper was leaked and printed in the newspapers.

Adjourned to 22.8.2012.

Till the investigation is over, the process for verification of documents of the candidates, who have passed the written examination may continue, however, the appointment letters be not issued.

That the Deputy Inspector General of Police, Punjab State Cyber Crime, SAS Nagar, Mohali has conducted the preliminary investigation with regard to the allegations made in the present case and has submitted his inquiry report on 22.1.2013.

That the report of DIG, Cyber Crime, SAS Nagar Mohali dated 25.1.2013 is basically a preliminary inquiry report based upon the data of Mobile Service Provider and some inquiry of some candidates/persons. As per the police authorities, further investigation can be conducted after registration of FIR to find out guilty persons. The preliminary report has taken almost 4 months and it is expected that the complete investigation after lodging of FIR may take longer time to complete the process.

That PSPCL is in an urgent need of man power as recruitment process was initiated in December, 2011 and this process has not been completed so far. It is brought out that the AEs and JEs are the core persons to handle the various distribution, construction and other works in PSPCL. Due to non-filling up of the posts in various Sub Divisions and other organizations, the work is badly affected, which affects the satisfactory service to the consumers. In addition to this, PSPCL is implementing the information technology under ADPRP (A) and improvement of distribution system in ADPRP(B), which is being funded by the Central Government through Power Finance Corporation for ADPRP (A) part itself is of the grant of Rs. 272 Crores. The timely completion of this project is very important, otherwise, this grant of Rs. 272 crores will be converted into the loan. Further, in order to handle this project in the field young Engineers (having knowledge of computer and I.T.) are required.

That in view of the foregoing position, it is prayed that DIG, Cyber Crime, Mohali will continue to investigate the matter after lodging of FIR to identify the persons/candidates, if any, who may be involved in this misdeed of leaking of question paper and providing illegal assistance from outside. However, PSPCL/Edcil (i.e. answering respondents) may kindly be allowed to reconduct the written test for all categories of posts of Assistant Engineer (OT)s and Junior Engineers/APAs/AJSs/Supervisor Instrumentation). While conducting this written test more precautions in consultation with Cyber Crime to prevent such incidents during the examination shall be taken care. These precautions may include frisking of all candidates by police manually and with suitable devices for any mobile or any communication devices or any suspicious items, which may assist the candidates

in leaking/copying the paper, installation of Mobile Jammers etc. The candidates who will be identified in the final report of DIG/Cyber Crime in misdeed in the earlier written test, shall be debarred from appearing in the written test or their result shall not be declared or appointment letters shall not be issued or shall be debarred from appearing in further in any test etc. as to be decided by the answering respondent based on further investigations.

That there is immediate need of persons which the Corporation wants to appoint to the posts which are under challenge in the present case, because due to the vacant posts and non availability of appropriate man power, the answering respondent is facing a great difficulty to cope up with the need to ensure effective power supply to the customers through out the State. The Corporation has to maintain the balance between the Power Generation, Power Transmission and Power Distribution. For this purpose, there is an immediate need to fill up these posts as advertised by the Corporation, which are under challenge in the present case.

A chart showing the projects and need of manpower is annexed herewith as Annexure R-9.

Thus, keeping in view the allegations of large scale leakage of question paper and the interim reports submitted by the investigating agencies, the respondent-Corporation has sought to scrap the examination held on 15.7.2012 with a further direction to re-conduct the written test for all categories of posts of Assistant Engineer (OT)s and Junior Engineer/APAs/AJSs/Supervisor (instrumentation).

However, learned counsel appearing on behalf of the selected candidates, at this stage, has prayed that the investigation is still at the preliminary stage and more evidence is yet to come. Moreover, the facts suggest that the tainted ones can be sifted from the untainted ones and therefore, there is no justification to cancel a recruitment process en bloc as this would inevitably deny the fruits of labour and success to selected candidates without any justification.

Keeping in view the facts and circumstances of the case, it is deemed appropriate to implead the State of Punjab as respondent in this case through the Principal Secretary, Department of Home Affairs, State of Punjab.

Ordered accordingly.

10. It is also necessary to mention here that a preliminary enquiry was conducted by the Corporation in which even though the factum of unfair means being adopted by the aspirants was established but the extent thereof was not conclusively ascertained. In the meantime, an FIR was registered and pursuant thereto, a Special Investigating Team was constituted to look into the whole affairs. The respondent-Corporation took the decision of cancelling the entire examination and issued a public notice for holding the examination afresh on 27/28-7-2013. This Court, as an interim measure, directed that all the persons,

who had earlier applied for taking the examination in the year 2012 would be permitted to take the examination afresh as per the roll numbers/admit cards issued to them in the previous process.

11. The petitioners now have made a grievance against the impugned decision of the Corporation dated 25.3.2013 vide which the entire examination held in the year 2012 was cancelled and the process resulted therefrom has been scrapped and examination was ordered to be held afresh. This order is questioned by all the petitioners broadly on the following issues:-

(i) that mass copying has taken place only qua the examination for the posts of JE (Electrical) and A.E. (Electrical) and not qua any other stream and, therefore, the consequences of the decision of cancellation could not be applied uniformly to all the categories of the aspirants;

(ii) that the petitioners were selected in the process and before taking any action adverse to them, they ought to have been heard as a measure of compliance of the principles of natural justice;

(iii) that the decision of cancellation is presumptuous and paints all the candidates with the same brush without segregating the ones who had indulged in the mal-practices from the ones who had honestly taken the examination;

(iv) that the decision could not have been applied uniformly as the mal-practices have surfaced only regarding Centres at Patiala and not qua Chandigarh and Jalandhar;

(v) that even as per the preliminary report regarding few of the Centres, it was established that a miniscule number of candidates were found indulging in such an activity which was negligible considering the magnitude of the candidates, who had taken the examination in those Centres. In this regard, specific mention has been made that Centres having Code Nos. 6001, 6002 & 6003, pertained to the examinations for J.E. (Electrical) whereas Centres having Code Nos. 6004 and 6005 pertained to the examinations for J.E. (Mechanical) where no irregularities were detected;

(vi) that candidates of UDC (Accounts) and UDC (General) who had taken the examination similarly at all the Centres have been given the appointments even though they appeared in the same examination and in the very same Centres. This would amount to discrimination and be hit by Article 14 of the Constitution of India; and

(vii) that even though there was a clause in the advertisement which contemplated that an aspirant involved in any such activity of unfair means would be debarred from appointment but such a decision could not have been taken uniformly without segregating the cases of the wrong doers from the honest ones. In fact there has been no mass copying and only at few Centres some people have indulged in the unfair means for which the entire lot cannot be made to suffer.

12. In short, the sum and substance of the arguments noticed above is that the respondents ought to have segregated the black-sheep and penalized them and not cancelled the entire examination which results in painting all examinees with taint by the same brush.

13. The respondents stand by their decision and contend that enquiring into the matter where the bungling is of such a magnitude would be time consuming and that they are confronted with the situation with which they have to fill up the posts in order to carry out the works of public importance which is hostage to financial arrangement. They have also stated that there is no malice on their part and their endeavour is to ensure that process of public appointment is fair and transparent.

14. I have heard the learned counsel for the parties. This Court had asked for the status report regarding the progress of investigation which has been undertaken pursuant to FIR No. 04 dated 5.3.2013 in this regard. The report submitted is revealing and indicates a deep rooted conspiracy and a devious modus operandi. It indicates that the question papers were leaked in both the sessions through Facebook, a social networking site, from the examination hall and answers transmitted through SMS from outside. Various persons have been named in the report who were instrumental in carrying out this action of mass copying. The magnitude and the meticulous manner in which the whole operation was conducted can be gauged from the fact that two Centres were set up which were called as "Nakal Centre I" and "Nakal Centre 2" from where the entire operation was managed and manipulated. The phone call details running into hundreds have also been appended to the report that also suggests a very active interaction between the candidates inside the Centres and the ones operating from outside to provide assistance to those who were inside.

15. There is, thus, no doubt that there was a gross-bungling in the entire process of examination. In an operation of such like magnitude, it would be extremely difficult to even establish conclusively the end beneficiaries even if the best form of investigation is carried out. There would be persons who would not have carried their own cell phones but would be carrying cell phones standing in the name of other persons and there would be persons who would not be carrying any phones at all but still benefited from others around them and thus they would easily evade detection. It is also not in dispute that one of the papers pertaining to general awareness was common to all which was of 40 marks. This itself would have created a tilt in balance in favour of the end users of unfair means considering the significant number of marks allocated.

16. The process of examination indeed has to be transparent and fair and if the facts indicate that the paper itself has been leaked then the very sanctity and legitimacy of the examination process comes under a cloud.

17. It is important to preserve and ensure sanctity of a selection processes which pave the way to public appointments, for the reason a dubious selection means a

wrong man in the wrong place and this has a cascading effect on the efficiency, integrity and credibility of the human resource and ultimately the institution which utilises such a force. A tarred face of an employee often becomes the tarred face of the institution.

18. Any aspersion cast on such a process therefore has to invite a strong remedial reaction otherwise the aspiration of people waiting for gaining public employment is crushed and this too has a ripple effect leading to cynicism and unrest.

19. To the mind of this Court, even if the respondents undertake a process of sifting the tainted from the untainted ones, it would be a process which may achieve inconclusive results, shots in the dark and end up giving the benefit to undeserving candidates who go undetected.

20. Reliance has been placed on the Supreme Court judgment in the case of East Coast Railway and another vs. Mahadev Appa Rao and others, passed in Civil Appeal No. 4964 of 2010 and decided on 7th July, 2010, wherein paras 13 to 15, the Hon''ble Supreme Court has observed that the State does not enjoy an unqualified prerogative to refuse the appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected in the merit list and, thus, the validity of State's decision not to make appointment is a matter of judicial review. While examining the issue further, the Hon''ble Supreme Court observed that the examination could not be cancelled in an arbitrary manner without examining the cause of those eligible persons who have been selected even though such candidates did not have any indefeasible right to be appointed. Paras 13 to 15 are extracted herein-below:-

13. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

14. To the same effect is the decision of this Court in Union Territory of Chandigarh Vs. Dilbagh Singh and others, , where again this Court reiterated that while a candidate who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules entitling him to the same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a malafide manner. That was also a case where selection process had been cancelled by the Chandigarh Administration upon receipt of complaints about the unfair and injudicious manner in which the select list of candidates for appointment as conductors in CTU was prepared by

the Selection Board. An inquiry got conducted into the said complaint proved the allegations made in the complaint to be true. It was in that backdrop that action taken by the Chandigarh Administration was held to be neither discriminatory nor unjustified as the same was duly supported by valid reasons for cancelling what was described by this Court to be as a dubious selection.

15. Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step in aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for malafide reasons or in an arbitrary manner. It is trite that Article 14 of the Constitution strikes at arbitrariness which is an anti thesis of the guarantee contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to any such action, no matter the candidates do not have an indefeasible right to claim an appointment against the advertised posts.

21. If the facts of the aforesaid case are to be seen, they are completely distinguishable. In the cited case, after the test had been conducted some unsuccessful candidates complained about the defective typewriting machines which placed them at a disadvantage vis-a-vis successful candidates. Similarly, the successful candidates made a representation urging the authorities to go ahead with the selection which, however, resulted in the cancellation of the test and holding of a new test.

22. In the case of Inderpreet Singh Kahlon and others vs. State of Punjab, Civil Appeal No. 3411/3421 of 2005 decided on 3rd May, 2006, the Hon"ble Supreme Court has observed as follows:-

The High Court has not considered the case in the proper perspective. The consequences of en masse cancellation would carry a big stigma particularly on cancellation of the selections which took place because of serious charges of corruption. The question arises whether for the misdeeds of some candidates, honest and good candidates should also suffer on en masse cancellation leading to termination of their services? Should those honest candidates be compelled to suffer without there being any fault on their part just because the respondents find it difficult to segregate the cases of tainted candidates from the other candidates? The task may be difficult for the respondents, but in my considered view, in the interest of all concerned and particularly in the interest of honest candidates, the State must undertake this task. The unscrupulous candidates should not be allowed to damage the entire system in such a manner where innocent people also suffer great ignominy and stigma.

23. Both the cases are distinguishable on facts. In Inderpreet Singh Kahlon's case (supra), some of the selected candidates had made their way to appointment and occupied the posts when the mis-doings of the Chairman of the Public Service Commission were exposed. Evidently, it was a case where identification of such persons was a possibility and it is for this reason that the Supreme Court observed that each case ought to have been evaluated to determine conclusively whether the appointment obtained was through a tainted process or not. In Mahadev Appa Rao's case (supra), it was again a case where some complaints were made regarding the quality of typewriters which could have also been verified with some conclusiveness. But in the instant case, even if the investigation carried out by the police results in naming the culprits yet the question of the end beneficiaries will still remain in the realm of ambiguity.

24. Reliance has also been placed on another judgment of the Hon'ble Supreme Court in the case of Anamica Mishra and Others Vs. U.P. Public Service Commission, Allahabad and Others, wherein it has been observed as follows:-

We have heard counsel for the parties and are of the view that when no defect was pointed out in regard to the written examination and the sole objection was confined to exclusion of a group of successful candidates in the written examination from the interview, there was no justification for cancelling the written part of the recruitment examination. On the other hand, the situation could have been appropriately met by setting aside the recruitment and asking for a fresh interview of all eligible candidates on the basis of the written examination and select those who on the basis of the written and the freshly held interview became eligible for selection.

25. For the very same reason which has been expressed by this Court, these observations would also not be of much help to the petitioners. This Court is confronted with two situations: one where the issue of culpability of the persons who have hijacked the process of examination is concerned and the second about the legitimacy of the examination process. Both these issues cannot be confused; as bringing the guilty to book is an altogether different matter but upholding the sanctity of the examination process, which eventually leads to selection and appointment, is a separate issue;

26. If because of this ambiguous situation, where number of people who actually indulged in unfair means through abuse of gadgetry, gain access to employment, would it not be a travesty of justice vis-a-vis those who took the examination honestly but were left out of the process on account of the unholy march that the tainted candidates steals over an honest one without being detected? It is, thus, in the fitness of things that the decision holding the examination afresh be upheld so as to enable all the desirous candidates to partake the examination with a level playing field. Indeed the ones who have merit and substance need not fear if they have substantial confidence in their abilities. But certainly those with dubious credentials and conduct, who want to sneak in through illegitimate means would certainly have a reason to quake.

27. Insofar as the cases of UDCs are concerned, the petitioners pleaded discrimination since they have been appointed despite this irregular process of examination whereas the petitioners have been denied a similar benefit.

28. It is the settled proposition of law that mere selection will not give a right of appointment to anyone. Therefore, the petitioners cannot assert the plea of discrimination, more particularly, when the process indicates gross-bungling. But at the same time, the respondents ought not to have rushed into the appointments of the UDCs when they were confronted with a situation of a questionable conduct of examination. The conduct of the respondents necessarily has to be frowned upon but there is no challenge to the appointment of UDCs and neither are the selected persons before this Court. The Court cannot comment on such appointments in the absence of any specific challenge to their appointments.

29. The writ petitions are, thus, disposed of by holding that the process of fresh examination has been justifiably resorted to by the respondents in the given set of circumstances. The Corporation is at liberty to review the decisions of the UDC, who have been given appointment despite such a tainted process. In the meantime, the petitioners may be permitted to take examination provisionally. During the process of appointment, the respondents would do well to deeply examine the candidatures, and if some of them are indicted in enquiry pursuant to the FIR, the respondents would be at a liberty to keep them out of appointment.