

(1996) 10 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2710 of 1995

Miss Anshul Kakkar and Another	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Citation : (1997) 115 PLR 93

Hon'ble Judges : M.S. Liberhan, J;K.S. Kumaran, J

Bench : Division Bench

Advocate : Rajive Atma Ram, for the Appellant; M.C. Beri, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

K.S. Kumaran and M.S. Liberhan, JJ.—The undisputed facts in this writ petition are as follows.

The second respondent-Punjab Public Service Commission (hereinafter referred to as the Commission) advertised for the appointment of 12 posts of Subordinate Judge (P.C.S. Judicial Branch) in April, 1993, out of which 6 posts were reserved for general category, 4 for the scheduled castes, and 2 for Ex Servicemen, mentioning specifically that the vacancies are liable either to be increased or decreased. The two petitioners in this writ petition who belong to the general category and possess the requisite educational qualification were permitted to appear in the written examination and were also among the 20 candidates called for viva voce, as they fulfilled the pre-requisite condition for being called for the interview. Out of 20, 15 belong to the general category, 4 to be scheduled castes and 2 belong to the Ex-Servicemen category. After the interview, the respondent-Commission prepared a merit list published it in the Punjab Govt. Gazette in accordance with the Punjab Civil Services (Judicial Branch) Rules 1951. But while forwarding the list for publication the respondent Commission mentioned against the names of the present petitioners as "qualified but not found suitable". There is no dispute between the parties with regard to the above facts.

2. But the petitioners contend that the respondent Commission's duty is to hold the written examination and the viva voce test, prepare a list of qualified candidates in accordance with the marks obtained by them in the order of merit, and publish the same in the Punjab Govt. Gazette, and forward the list to the Government, and it is for the Government, in turn, to forward the names in accordance with the merit list as prepared by the Commission to the High Court of Punjab and Haryana for entering their names in the register maintained by the High Court. The petitioners also contend that as and when vacancies arise in the Judicial Branch of the Punjab Civil Services, the High Court will make the selection from the register in which the names have been entered and forward the same to the Punjab Govt. for appointment as Subordinate Judges under Article 234 of the Constitution of India. The petitioners, therefore, contend that the respondent Commission is bound to publish the names of all qualified persons and send a list of all qualified persons to the Punjab Govt. in the order of merit, and it is not open to the respondent-Commission to further make selection/categorisation from the qualified persons and to say that a particular candidate is not suitable for appointment. This is what the respondent-Commission has done in the case of the petitioners, as is evident from Annexure P1 to the writ petition wherein, it has mentioned the names of 13 persons as qualified and found suitable and recommended for appointment in the general category, the names of 4 persons in the scheduled caste category, the name of one person in the ex-Servicemen category, and the names of the present two petitioners as "qualified but not suitable". Therefore, the petitioners have prayed for the issue of a writ in the nature of certiorari quashing the impugned notification Annexure P1 to the extent it declares the petitioners unsuitable for appointment; a writ of Mandamus directing the respondent-Commission to declare the petitioners as fully qualified for appointment to the Judicial Branch, and further directing the respondent-Commissioner to forward the names of the petitioners to the Government as per the 1951 Rules; to directing the Punjab Govt. to recommend the names of the petitioners to the High Court (respondent No. 3) for entering their names in the High Court Register, and also directing the Punjab Govt. and the High Court to appoint the petitioners to the Judicial Branch of the PCS. Second respondent-Service Commission - has filed a written statement admitting most of the facts, but, alleging that the vacancies were increased from 12 to 26 (which included 23 in the open category) and that the names of 13 candidates who were higher in merit were recommended for appointment. The respondent-Commission also alleges that the overall merit of the petitioners was lower than others and so, their names were not recommended for appointment. Another contention raised by the respondent-Commission is that since only 13 vacancies were available for the general category, it had recommended the names of 13 candidates in the general category, and that the petitioners were not found suitable in view of their overall performance and, therefore, not recommended. In more than one place, the respondent-Commission has stated that in view of the vacancies in the general category being 13, the Commission had to recommend the 13 qualified candidates. It has also alleged that the Commission had to determine the

suitability for appointment and that the petitioners were not found suitable. It is specifically alleged that it was not incumbent that all the candidates who had been interviewed by the Commission are to be declared as successful irrespective of the number of vacancies; that the next advertisement for the Judicial Branch of the PCS Examination has already been issued in the newspaper on 24.12.94; that even the written examination has already been held from 21.2.1995 to 24.2.1995; that the recommendation of the selected candidates is scheduled to be made in May, 1995 and, therefore, even the old select list automatically expires after the holding of the next examination.

3. In these circumstances, we have to first see whether the respondent-Commission - is entitled to declare certain candidates as qualified, (including the petitioners) but, while doing so, dub the petitioners herein as "not suitable" for appointment? We have also to see whether, the respondent-Commission can take into consideration the number of vacancies while making the recommendation. If the respondent-Commission is bound to send only the list of qualified candidates in the order of merit without any appendage, as has been done in the case of the present petitioners then the further question arises and whether the Punjab Government is bound to include and send to the High Court the names of the petitioners also in the select list being entered in the register maintained by the High Court, and whether the Government is bound to appoint the petitioners to the Service as prayed for by them?

4. The questions whether the Service Commission can mention that a candidate is qualified but still is not suitable for appointment, and whether the Service Commission can take into consideration the number of vacancies for the purpose of sending the list of qualified candidates, and whether the Government is bound to send the names of the petitioners also to the High Court for being entered in the Register maintained by the High Court are answered and are squarely covered by a decision of the Supreme Court in *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*, .

5. Therefore, we have decided to admit this writ petition and also to dispose of the same finally at this stage itself. In this decision relied upon by the petitioners, the Hon"ble Supreme Court had to consider the claim of the petitioners before them for appointment as Sub Judge in Haryana as per the Rules relating to the appointment of Sub Judges in Haryana which are in pari materia with the Punjab Civil Services Rules, 1951. The Hon"ble Supreme Court held that the duty of the Public Service Commission is confined to holding the written examination, viva voce test, arranging the order of merit, according to marks, among the candidates who have qualified as a result of the written and viva voce test. Thereafter, the Public Service Commission is required to publish it in the gazette and to make the result available to the Government. Hon"ble Supreme Court further held as follows:-

"The Public Service Commission is not required to make any further selection from the qualified candidates and is, therefore, not expected to withhold the

names of any qualified candidates. The duty of the Public Service Commission is to make available to the Government a complete list of qualified candidates arranged in the order of merit. Thereafter the Government is to make the selection strictly in the order in which they have been placed by the Commission as a result of examination. The names of the selected candidates are then to be entered in the register maintained by the High Court strictly in that order and appointments made from the names entered in that register also strictly in the same order."

The Hon^{ble} Supreme Court further found as follows :-

"In the instant case the Public Service Commission did not publish the result in the first instance and sent only the names of 17 candidates belonging to general category to the Government, though many more had qualified," and held.....

that was wrong. The names of all the qualified candidates had to be sent to the Government. The reason given by the Public Service Commission for not communicating the entire list of qualified candidates to the Government is that they were originally informed that there were only 28 vacancies. That is not a sound reason at all. Under the "Rules relating to the appointment of Subordinate Judges in Haryana", the Public Service Commission is not concerned with the number of vacancies at all. Nor is it expected to withhold the full list of successful candidates on the ground that only a limited number of vacancies are available."

This decision was followed by this Court in *Kamal Kant v. State of Haryana* 1991 (3) SLR 187, which was a case that arose under the Punjab Civil Services (Judicial Branch) Rules, 1951, though it related to the State of Haryana.

6. Therefore, it is clear from the above decisions that the Public Service Commission has only to hold the tests both written and viva voce; prepare a list of candidates who are qualified, publish it in the gazette and send the list to the Government; and the Government has to send the names of the qualified candidates to the High Court. It is clear that the second respondent - Public Service Commission - has no right to make a further classification as to whether the candidates found qualified are not suitable for appointment. It is also evident that the second respondent - Public Service Commission - is not concerned with the vacancies while making the recommendations. Therefore, the action of the second respondent -Public Service Commission, while stating that the petitioners are qualified any dubbing them as not found suitable is not only not warranted and is against the Rules also. This Court while disposing of the case reported in 1991 (3) SLR 187 cited, also directed as follows:-

"Since the same rules are applicable for selection/appointment for Subordinate Judges in the State of Punjab, we direct that a copy of this judgment be sent to the Government of Punjab in the Home/Judicial Department so that they may also carry out the order and directions given by us and comply with the requisite rules." But in spite of this direction given in this judgment, it is unfortunate that the State of Punjab and the second respondent - Public Service Commission have

not taken note of the decision of the Hon''ble Supreme Court rendered in Neelima's case (supra) and Kamal Kant's case (supra), and the Public Service Commission still persists in violating the Rules.

7. Of course, the learned Asstt. Advocate General relying on the decision of the Hon''ble Supreme Court in the The State of Haryana Vs. Subash Chander Marwaha and Others, , contended that the mere existence of vacancies does not give any legal right to a candidate in the select list to be appointed to the post, and that it is for the Government to decide how many appointments shall be made. He also contended that the mere fact that a candidate's name appears in the list does not entitle him to be appointed, that the competitive examination is for the purpose of showing that a particular candidate is eligible for consideration, and that selection for appointment comes later. But this is a different matter altogether. This decision is not the authority for the proposition that the Public Service Commission can withhold the names of eligible candidates, or to say that certain candidates are eligible but are not found suitable. But, this decision only states that the Government is not bound to appoint a candidate found in the select list simply because there are vacancies, and it can fix a minimum standard than the one fixed for a candidate for selection. It is in these circumstances that it was held by the Hon''ble Supreme Court that it is for the Government to decide as to how many appointments shall be made and that the mere fact that the name of a person is found in the select list does not entitle him to be appointed.

8. The learned Assistant Advocate General also relied upon the decision of the Hon''ble Supreme Court in State of U.P. Vs. Rafiquddin and Others, and contended that the list of candidates prepared by the Public Service Commission on the basis of result of competitive examination of a particular year should not normally be used after the result of the subsequent examination is cleared. But, in the present case we find that only examinations have been held and the final results are yet to be announced, even though the examination of the written test may have been published. Therefore, on this ground that the examinations have been held and the final results are likely to be announced in this month or in the next month, it cannot be stated that the petitioners herein cannot claim that their names should be forwarded by the second respondent (the Public Service Commission) by making an appropriate publication, but without dubbing them as not found suitable, or that they cannot claim that the Government should send their names to be entered in the register maintained by the High Court. Even otherwise, we feel that the rights of the present petitioners, who have qualified themselves along with others but could not get appointment because of the unjustifiable attitude of the second respondent in sending a list of qualified persons (including the petitioners), but mentioning as against the petitioners that they are not suitable, cannot be affected on this ground. Had the second respondent not done so, the first respondent (the State of Punjab) would not have sent their names to the High Court for being entered in the register maintained by the latter. The rights of the present petitioners cannot be affected

because even before the start of the subsequent examinations they have come to the Court and their rights have also been protected by this Court by order dated 30.3.1995 by ordering that the appointments, if any, made will be subject to the result of the writ-petition.

9. The facts of the case reported as the Rafiquddin's case (supra) relied upon by the learned Asstt. Advocate General are distinguishable from the facts of the present case. In that decision, what happened was that by a notification issued in 1970, the U.P. Public Service Commission held a competitive examination for the recruitment of Munsifs in the U.P. Judicial Service. A list of candidates who had passed in the written and viva voce test was sent to the Government and they were appointed as Munsifs. There were more vacancies and the Government requested the Public Service Commission to reduce the minimum marks prescribed in the viva voce from 40% to 35%. In accordance with that, a second list of candidates was recommended by the Public Service Commission, and they were also appointed by the Govt. as Munsifs. By that time, another notification for selection of Munsifs was issued in the year 1972. Certain amendments were made to the Rules and the requirement prescribing minimum marks in the viva voce test was dispensed with. The candidates selected in the competitive examination held in pursuance of the 1972 notification were appointed as Munsifs. The Govt. still needed more candidates. A high level committee consisting of the Chief Minister, the Chief Justice and the Chairman of the Public Service Commission decided to appoint candidates of the year 1970 who were unsuccessful in the viva voce. Once again the Commission forwarded a list of such persons (unplaced candidates) to the Government and they were appointed Munsifs. There arose a dispute as to the seniority in case the persons who were appointed Munsifs from among the unsuccessful candidates in viva voce (unplaced candidates) but who were still appointed in pursuance of the decision of the high level committee and those who were appointed from the 1972 list. It was in those circumstances that the Hon'ble Supreme Court held that the list of selected candidates prepared by the Public Service Commission on the basis of the result of the competitive examination of a particular year should not normally be used after the result of the subsequent examination is declared. It was held that the result of a particular examination must come to an end at some point like a "dead ball" in cricket. But the facts of the present case are entirely different. As pointed out already, it is because of the unjustifiable action of the second respondent (the Public Service Commission) that the names of the present petitioners could not be forwarded by the first respondent (the State) to the High Court for being entered in the register maintained for the selected candidates. The petitioners have approached this Court even before the results of the examinations for the subsequent year were published. Therefore, the respondents cannot deprive the rights of the petitioners either on the ground that the examinations for the subsequent selections have been held or that the results are going to be published. In our view, therefore, the decision of the Hon'ble Supreme Court is not applicable to the facts of the present case.

10. The other contention raised by the learned Asstt. Advocate General is that it is always open to the Government not to appoint a person even though his name is found in the list of selected candidates, and that simply because the name of a person is found in the select list prepared by the Public Service Commission it vests no right in him to claim that he should be appointed. Reliance was placed on the decisions in Neelima's case (supra) and Subhash Chander Maraha's case (supra) which certainly support the legal proposition propounded by the learned Asstt. Advocate General. It is certainly open to the High court not to either fix a minimum standard or not to fill up all the vacancies for any valid reason; even though there may be vacancies. Therefore, the petitioners will not be entitled to the relief that they should be appointed.

11. Accordingly, the petition is allowed quashing the notification Annexure P1 to the extent it declares the petitioners as unsuitable for appointment to the Punjab Civil Service (Judicial Branch). The second respondent (the Public Service Commission) is directed to declare the petitioners fully qualified for appointment as such and forward the names of the petitioners to the 1st respondent who shall, in turn, forward the names of the present petitioners to the 3rd respondent (the High Court) for entering their names in the register maintained by the High Court. With the above directions the writ petition is disposed of.