
(2011) 03 P&H CK 0372
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 728 of 2009 (O and M)

Sanjay and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311, 315, 320

Citation : (2011) 03 P&H CK 0372

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Grover, J.—This order will dispose of two writ petitions bearing Nos. 728 of 2009 and 3772 of 2009 since they involve commonality of facts and issues that have been raised therein. For the sake of convenience, the facts are taken from CWP No. 728 of 2009.

2. The Petitioners prayed for issuance of writ in the nature of Certiorari quashing the selection of the private Respondents who have been arrayed differently in these writ petitions and also pray that an alternate prayer be granted to them conferring selection upon the Petitioners instead of those who have been selected by the State of Haryana (Respondents Nos. 1 and 2)

3. The facts of the case are that the office of the Respondent No. 2 issued an advertisement on 22.7.2007 to fill up 910 posts of Drivers in the Transport Department.

4. Since the selection process pertain to the entire State of Haryana, 10 Selection Committees were constituted by the official Respondents which were to conduct the selection process at 10 different depots of Haryana Roadways. For the sake of convenience, at some places two depots were clubbed together. The Petitioners, however, in these writ petitions questioned the selection which was made in one of such selection centres i.e Sonepat depot.

5. In the advertisement (Annexure P-1) it was given out that it would be imperative for all the candidates to pass two tests namely dug test and road test and third test called zig zag test was also included and in the eventuality of a candidate qualifying in these three tests, he was to be subjected to an interview. All the Petitioners herein qualified the three tests and were called for interview. The interviews were conducted by the said depot from 9.1.2008 to 11.1.2008. The final result regarding selection was declared on 20.6.2008 and 48 persons were declared successful who have been arrayed as private Respondents.

6. The Petitioners who were dis-satisfied with the result of the selection sought information under the Right to Information Act to have access to the entire recruitment record including the result of the tests which were videographed. They also sought information from Respondent No. 3 in that regard. The information which was supplied to the Petitioners has been placed on record as Annexure P-6 which reveals that while the proceedings of the dug test, zig zag test and road test were signed by all the four members of the Selection Committee, the interview result was not signed on each page except for the concluding page.

7. This prompted the Petitioners to file another application under Right to Information Act to solicit information from the four members of the Selection Committee as to whether each one of them had signed each page of the proceedings separately regarding dug test, zig zag test and road test and also the interview list.

8. The members responded to this query by saying that they had appended their signatures on each page of the proceedings which included the proceedings of the interview as well. But the record which was supplied to the Petitioner spoke otherwise. They have thus questioned the entire selection with the allegation that it has been conducted unfairly. More information sought by them from other depots reveal that the committee members had appended their signatures to each page of the proceedings.

9. To highlight their grievance regarding the unfair selection they point to the following factors:

i) the pages of the proceedings was said to have been signed by all the committee members but the record supplied to them does not correspond to the information supplied by the members of the committee.

ii) The list reveals that there is a pattern in the allotment of grades to the selected candidates as candidates from Sr. No. 1 to 28 have been assessed as excellent and thereafter all the candidates have been assessed as per blocks which recede in grading from very good to good and from good to average except for the last page where there is grading awarded to the candidates which is explained by them to say that it belongs to the reserved category.

iii) The selected candidates who have been given the excellent grades were not

having the marks in the test corresponding to their grading.

10. Notice of motion having been issued, the Respondents have submitted their reply to the averments made in the petition wherein they have denied any unfairness in the selection process and have stated that the process was fair and since the Petitioners have lost after competing with the selected candidates they are not permitted to raise any grievance qua the selection process. It has been averred in the reply that the first, second and third round of selection process pertain to the holding of dug test, zig zag test and the road test and persons who pass these tests were subjected to interview which was also conducted by the members of the committee in a transparent manner. They pleaded that the document which has been produced by the Petitioner with the writ petition regarding the marks given to the selected candidates is fabricated as no such procedure was followed and no such document exists in their record. The only criteria which was adopted was to indicate whether a candidate had passed or failed in these tests and the information supplied by Respondent No. 5 is totally contrary to the record of the office for which necessary disciplinary action has been initiated against him. It was averred that Respondent No. 5 has instigated the instant litigation and that all the allegations made were totally baseless considering the serious and transparent endeavour of the Respondents to conduct the selection process fairly.

11. The contentions that have been raised before this Court are primarily on the lines of the grievance and the response which has been raised in the petition and reply respectively.

12. During the course of proceedings, this Court summoned the original record of the selection. The Respondents produced the original record pertaining to number of other centres except Sonapat. Time was granted to them repeatedly to produce the original list prepared by the Selection Committee in order to enable this Court to evaluate the allegations set up in the petition and to test their veracity.

13. The record was however not produced. What is pertinent to note here is the contention which has been raised by Sh.H.S. Hooda, learned Advocate General appearing for the State of Haryana. He has contended before this Court that the result list which has been appended to the petition as Annexure P-6 is merely a compilation which was received by the Head Office and on the basis of which the result was prepared. He has stated that similar compilations were received from all the centres and on receipt thereof, a common merit list was prepared at the Head Office by which all the posts were sought to be filled. He has further stated that the Petitioners names also find mention in the list appended to the petition as they had participated in the interview and few of them got A grading but they had to be kept out of the purview of selection because there were younger candidates available and in view of the guidelines issued by the Transport Commissioner, the relevant of which is extracted herebelow, candidates who are younger in age were preferred to some of the Petitioners (these guidelines were

however not set up in the reply but in any eventuality since they have been brought to the notice of this Court, they are permitted to be taken on record as mark "A"):

The general practice followed for slotting a driver in the merit list has been on the basis of date of birth whenever there was a tie among two or more candidates;

14. It has further been contended by the learned Advocate General that the Selection Committee of Sonapat depot in their wisdom supplied this very list to them and no other list to the contrary is existing.

15. I have heard learned Counsel for the parties and have perused the material on record as also the relevant record pertaining to the selection of Sonapat depot as also few other depots such as Karnal and Chandigarh.

16. What is interesting to note is that in the depots pertaining to Karnal and Chandigarh as also the few others, the Selection Committee has awarded the grades in their own hand and each page has been signed by them and thus forwarded to the Head Office. In some of the proceedings the total tabulation of the candidates who have received A+, A, B and C grades have also been recorded and to verify further the total number of candidates interviewed have been tallied with the persons who have been granted these grades. This reflects an insight into the mind of the Selection Committee which is conducting the process in a fair and transparent manner. But in so far as Sonapat depot is concerned, no such proceedings are available on record despite the persistence of this Court. Learned Advocate General with vehemence at his command has contended repeatedly that the list sent by the Sonapat depot is a compilation and even if this plea is accepted, the Court wants to know the foundation and the basis from which such compilation is carried out in print. It is not conceivable that the members of the Selection Committee would have prepared this list at the time of conducting the interviews and what transpired during the interview has to find its manifestation in the proceedings which the members would have resorted to ordinarily and prudently.

17. The approach of the State of Haryana has thus been evasive in this regard which when evaluated against the available record qua the other depots speaks volumes and can merely invite a cynicism of the Court. The process of selection has to be fair and transparent and any attempt which even remotely casts a shadow of doubt delivers a double blow. Not only does it adversely impact the aspirations of gullible person seeking appointment but it also hits at the credibility of the system and the Government and its functionaries do not have the liberty to put it at stake and if it does so Court has to intervene because if the credibility of the system is threatened it shakes the confidence of the people, and the process of selection in public appointments, for these reasons, cannot be given any other colour than fairness.

18. To the mind of this Court, the process of selection does not seem to be fair

as the perusal of the list reveals an attempt at a tailored selection list. It is not a reflection of the proper selection. Candidates from Sr. No. 1 to 28 have been assessed as excellent. Thereafter from 29 to 61 have been consistently assessed as very good and from 62 to 78 have been assessed as good and thereafter the remaining have been assessed as average.

19. The Court would have accepted a situation where after evaluation and to facilitate a proper compilation such a list has been made in accordance with selection made but if the roll numbers are to be seen then they also appear in the ascending orders with corresponding grades from Sr. No. 1 to 28 assessed as excellent. Thereafter from 29 to 61 have been consistently assessed as very good and from 62 to 78 have been assessed as good and thereafter the remaining have been assessed as average. This defies logic as it implies that first 28 candidates who appeared were all excellent while the next candidates from No. 29 to 61 were very good and likewise. In normal selection there would have been a jumbled record of assessments. There is thus no doubt in the mind of the Court that the entire result has been fudged.

20. Another factor which casts a serious doubt in the mind of the Court regarding selection process is the opinion given out by the four members of the Committee that they had scrupulously signed all the pages of the proceedings during the course of interviews. To shrug off this information by saying that it was a handiwork of Respondent No. 5 at whose behest the instant litigation has been put into motion is too far-fetched to be found palatable by this Court, *moreso*, when such an inference is attributed by the Respondents to an allegation against Respondent No. 5 that he belongs to the same village as the Petitioner No. 1.

21. I am afraid this is too remote a possibility to be accorded any seal of approval when it is tested against the information given by the Chairman of the Committee who is Deputy Transport Controller, a senior officer.

22. The action thus appears to be arbitrary.

23. Hon'ble Supreme Court in following judgments has held as under:

In *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, held as under:

Article 14 strikes at arbitrariness in State action, whether it be of the Legislature or of the executive or of an "authority" under Article 12, because any action that is arbitrary must necessarily involve the negation of equality and if it affects any matter relating to public employment, it is also violative of Article 16. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action *per se* arbitrary itself denies equal protection by law.

In *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, held as under:

The range and scope of Article 14 and consequently Article 16 have been

widened by a process of judicial interpretation so that the right to equality now not only means the right not to be discriminated against but also protection against any arbitrary or irrational act of the State.

In *Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others*, held as under:

An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity. Since the services of the Appellants were terminated not in terms of the rules, but in view of the commission of illegality in the selection process involved, the applicability of the relevant provisions of the statutes as also the effect of the provisions of Article 311 of the Constitution need not be considered.

In *State of Manipur and Others Vs. Y. Token Singh and Others*, held as under:

The State while offering appointments, having regard to the constitutional scheme adumbrated in Articles 14 and 16 of the Constitution, must comply with its constitutional duty, subject of just and proper exceptions, to give an opportunity of being considered for appointment to all persons eligible therefor.

In *State of Bihar Vs. Upendra Narayan Singh and Others*, held as under:

In 17th and 18th centuries a peculiar system of employment prevailed in America. Under that system, leaders of the political party which came to power considered it to be their prerogative to appoint their faithful followers to public offices and remove those who did not support the party. In the Federal Government, Jefferson implemented the spoils system to a large extent. The prescription of a four year term for various offices considerably increased appointment of political faithfuls to public offices and positions. The politicians who surrounded Jackson brought the spoils system to its full development as an engine of party welfare. Since then it became a regular feature in every administration.

The phrase "spoil system" was derived from the statement of Senator W L Marcy of New York, in a speech in the Senate in 1832. Speaking of the New York politicians, he said: "They see nothing wrong in the rule that to the victor belong the spoils of the enemy". By 1840, the spoil system was widely used in Local, State and Federal governments. As a result, America fell far behind other nations in civil service standards of ability and rectitude. When William Henry Harrison became President of America in 1841, the practice of appointing political followers had reached its pinnacle. Numerous persons hired through the spoil system were untrained for their work and indifferent to it. In the early days, government work was simple. However, as government grew, a serious need for qualified workers developed. After the Civil War, pressure started building up for reforms in recruitment to civil services. The gross scandals of President Ulysses S. Grant's administration lent credence to the efforts of reformers. In 1871, US Congress authorized the President to make regulations for appointment to public

services and to constitute Civil Service Commission for that purpose. However, this merit system ended in 1875 because the US Congress failed to provide funds for the same. Nevertheless, the experiment proved the merit system to be both functional and supportive.

Ultimately, the Civil Service Act of 1883 re-established the Civil Service Commission. The Act rendered it unlawful to fill various federal offices by the spoil system. Since then, much has been done in America to avoid the evils of the system. Federal civil service legislation has been greatly expanded. Many municipalities and states have made training and experience as a condition precedent for appointment to public offices.

In the territories of India ruled by Britishers also a large chunk of jobs went to the faithfuls of Britishers who were considered fit for serving British interest.

With a view to insulate the public employment apparatus in independent India from the virus of spoil system, the framers of the Constitution not only made equal opportunity in the matter of public employment as an integral part of the fundamental rights guaranteed to every citizen but also enacted Part XIV including Articles 309, 311, 315, 320(1) & (3). However, the Public Service Commissions which were supposed to be totally independent and impartial while discharging their function in terms of Article 320 have become victims of spoils system. With the passage of time appointment to these high offices became personal prerogatives of the political head of the Government and men with questionable background have been appointed to these coveted positions. Such appointees have, instead of making selections for appointment to higher echelons of services on merit, indulged in exhibition of faithfulness to their mentors, totally unmindful of their constitutional responsibility.

The scenario is worst when it comes to appointment to lower strata of the civil services. Those who have been bestowed with the power to make appointment on Class III and Class IV posts have by and large misused and abused the same by violating relevant rules and instructions and have indulged in favouritism and nepotism with impunity resulting in total negation of the equality clause enshrined in Article 16 of the Constitution.

Notwithstanding the basic mandate of Article 16 that there shall be equality of opportunity for all citizens in matters relating to employment for appointment to any office under the State, the spoil system which prevailed in America in 17th and 18th centuries has spread its tentacles in various segments of public employment apparatus in India and a huge illegal employment market has developed in the country adversely affecting the legal and constitutional rights of lakhs of meritorious members of younger generation of the country who are forced to seek intervention of the court and wait for justice for years together.

24. To the mind of this Court, selection list is clearly not an authentic list and there has been some improper exercise conducted by the Respondents while making the selection. 25. Once the Court comes to this conclusion that the

selection list was tampered with and the original record has not been made available to persuade this Court to conclude otherwise. The second contention that has been raised by the learned Advocate General regarding the preference being 14 given to younger persons over and above the Petitioners need not be gone into.

25. The writ petition is thus accepted. The impugned selection of the Drivers pertaining to the Sonapat depot is set aside and the Respondents-State of Haryana is directed to hold the selection afresh by considering all the 100 candidates who have passed the three tests afresh. After the same is done, the list of the selected candidates shall be sent to the Head Office which shall prepare a fresh selection list of the entire State of Haryana by including the result of the fresh selection of Sonapat depot.

26. Needless to say that the persons who will be selected would be offered the consequential appointments but they will not be entitled to any pecuniary benefits, if any claim is raised by them that the selection should relate back to the original date of interview.

27. Let the fresh selection process be concluded within a period of three months. The State of Haryana shall be free to constitute another Selection Committee for the said purpose.

28. Hence, allowed in the aforesaid terms. No order as to costs.

29. Record in original which was produced before this Court pertaining to the present case and other depots is returned to the Respondents in the Court today itself.