

(2010) 12 P&H CK 0124

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3894 of 2009 (O and M)

Sham Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Citation : (2010) 12 P&H CK 0124

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The Petitioner has filed this writ petition asking for issuance of a writ of quo-warranto /certiorari for quashing the selection

and appointment of Respondent No. 6, alleging that the same is illegal, arbitrary and is pregnant with nepotism.

2. The factual background is that State of Haryana had decided to fill up the posts of Teachers under Guest Faculty Scheme so that the study of

students may not suffer due to shortage of teachers. Such appointments were to be made on the basis of

CIVIL WRIT PETITION NO.3894 OF 2009 (O&M)

criteria, which was adopted. As averred in the petition, the required candidates were to be from the same village/town and if not available, then the

merit was to be seen of candidates belonging to the same block. The third priority was given to candidates from the District concerned.

3. The Respondents had invited applications on 10.11.2006 for appointment of the Teacher under Guest Faculty Scheme for J.B.T Teacher in

Government Middle School, Gumthala, District Yamuna Nagar. The Petitioner

being eligible in all respect, applied for appointment as a J.B.T

Teacher. In this regard, the Petitioner has placed application, Annexure P-2, on record, where it is recorded that the application is for the post of

JBT/S.S. Master. As per the Petitioner, Respondent No. 6, in connivance with District Education Officer, misrepresented the facts and submitted

an application stating that she was appointed in Government Middle School, Bhamboli, where she could not be adjusted and so should be

appointed at Government Middle School, Gumthala, District Yamuna Nagar. To rebut this assertion, the Petitioner has made reference to the

information obtained under the Right to Information Act to say that in fact Respondent No. 6 had never been appointed as J.B.T Teacher at

Government Middle School, Bhamboli and the stand of the State in this regard is also contrary to the information that is obtained by the Petitioner

and is placed on record. In this view of the matter, the Petitioner would urge that the appointment of Respondent No. 6 as a J.B.T Guest Teacher

at Government Middle School, Gumthala, is arbitrary and against the policy and as such, she has no right to

CIVIL WRIT PETITION NO.3894 OF 2009 (O&M)

continue on the said post.

4. Based on the material placed on record of the writ petition, notice of motion was issued by this Court. Obviously, the Petitioner had referred to

information supplied in Annexure P-2 to say that he had applied for the post of J.B.T. Teacher.

5. The official Respondents have filed reply, indicating that the Petitioner had never applied for the post of J.B.T. Teacher in Government Middle

School, Gumthala, District Yamuna Nagar. It is then disclosed that in fact the Petitioner had applied for the post of S.S. Master, for which he was

not considered eligible. The Respondents would also disclose that District Education Officer, Yamuna Nagar, had adjusted Poonam Rani,

Respondent No. 6 at Government Middle School, Gumthala, in view of the instructions dated 18.9.2006, Annexure R-2. The operative part of the

instructions, as reproduced, is as under:

If it is not possible for the Block Education Officers to adjust such persons then he/she will report the matter to the District Education Officer with

the complete list of candidates and D.E.O's will adjust such guest faculties in

other schools where vacancy is available. It would have been done as per instructions conveyed earlier. If same has not been done so far, it should be complied within next seven days.

6. It is also stated that initially when the Guest Teachers were engaged in various schools, no record of such teachers was kept in the schools. Even joining or relieving reports were not issued

CIVIL WRIT PETITION NO.3894 OF 2009 (O&M)

to such teachers. The Director, Secondary Education, gave adjustment power to District Education Officer. It is, thus, stated that the District

Education Officer, Yamuna Nagar, adjusted Respondent No. 6 on the post in question.

7. When the case came up for hearing before the Court on completion of pleadings, the issue boiled down to find out if the Petitioner had applied

for on the post of J.B.T. Teacher. The counsel for the Petitioner stuck to the stand that the Petitioner had applied for the post of J.B.T. Teacher as

well as S.S. Master whereas the consistent stand on behalf of the Respondents was that the Petitioner had applied only for the post of S.S.

Master. The Court accordingly directed the Respondents to bring the original application form of the Petitioner for production before the Court.

8. When the Respondents did not comply with these directions on more than one occasions, the person concerned was subjected to payment of

costs of `10,000/-. The cost was deposited. The record is also available for perusal of the Court. Mr. Rathee has shown the original record, which

has an application filed by the Petitioner in original. In the application form addressed to Principal, Government Middle School, Gumthala, District

Yamuna Nagar, the Petitioner has only applied for the post of S.S. Master. The submission that the Petitioner had applied for the post of J.B.T.

Teacher, can not be made out from any document available on record.

9. Faced with this situation, the counsel made a desperate attempt to urge that no acknowledgment was given to various

CIVIL WRIT PETITION NO.3894 OF 2009 (O&M)

persons who had applied for the post and as such, the application, which the Petitioner had made for seeking appointment to the post of J.B.T.

Teacher, may not be available on record. The counsel suggested a novel method for the Court by saying that the Petitioner is present in Court in

person and this fact may be confirmed from him. I am afraid, this course, as suggested and submitted by counsel for the Petitioner, is totally

uncalled for and the counsel is expected to know this. The person can not be produced to give evidence unless it is so required by the Court. The

course, as prayed, can not be accepted. There is nothing on the record to show that the Petitioner had applied for the post of J.B.T. Teacher.

10. To me, it appears that the Petitioner has made a clear attempt to mislead the Court in order to get relief. The subject of the application placed

on record as Annexure P-2 by the Petitioner, reads as under:

Application for the post of J.B.T. Teacher/S.S. Master.

11. The original record clearly shows that the Petitioner had only written 'S.S. Master' with his hand whereas the other portion reading

'application for the post' is a typed one. The words 'S.S. Master' are written in the hand of the Petitioner. It can not be, thus, accepted that the

Petitioner had applied for the post of J.B.T. Teacher and this evidence appears to be created by the Petitioner. Once the Petitioner had not applied

for J.B.T. Post, in my view, he would not have any locus to challenge the appointment of Respondent No. 6.

12. The writ of quo-warranto, as sought, would also not be

CIVIL WRIT PETITION NO.3894 OF 2009 (O&M)

available in the facts and circumstances of the case. It is nobody's case that Respondent No. 6 is not qualified to hold the post. The reasons for

which the record in regard to appointment of Respondent No. 6 may not be available with Government Middle School, Bhamboli, has been

sufficiently explained in the reply as there was no practice of keeping such record or giving joining or relieving report at that time. There is no merit

in the plea as raised by the Petitioner.

13. The writ petition is accordingly dismissed with costs of `5,000/-to be deposited in the accounts of Legal Services Authority, Haryana, for

providing misleading information to the Court.