

Before Ajay Tewari, J.

PARDEEP KUMAR AND ANOTHER—Petitioners

versus

THE STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 7692 of 1995

July 31, 2013

Constitution of India, 1950 - Art.226 - Writ Jurisdiction - Selection Process - Selection to post of Junior Engineers (Civil) in Rural Development and Panchayats Department - Number of posts filled more than the number advertised - Whether permissible - Instructions dated 22.03.1957 mandated that additional vacancies which arise within 6 months of the selection have to be filled up in pursuance to the same selection and no fresh advertisement is required for the purpose - Advertisement also stipulated that number of posts may vary - Selection took place two decades ago - Writ Petition dismissed.

Held, that in reply the stand taken is that between the time the posts were advertised and the selection was made, 46 posts were lying vacant and it was felt that all the vacant posts be filled up. With regard to the three extra posts which were filled up, reliance was placed on the instructions dated 22.03.1957 which mandated that additional vacancies which arise within six months of the selection have to be filled up in pursuance to the same selection and no fresh advertisement is required for that purpose. It was further mentioned that a selection committee had formed a criteria whereby 50 marks were set aside for academic qualifications, 30 marks were mentioned for viva-voccc/interview and 10 marks were stipulated for experience.

(Para 3)

Further held, that with regard to the third argument, learned counsel for the petitioner(s) assert that under the orders of this Court the original record was brought for their perusal and as per that original record individual marks have not been given by the members of the interview committee. This argument has been refuted by contending that there is no requirement in

law that when an interview is to be conducted, every member of the board has to give individual marks. Even otherwise it has been argued by learned counsel for the respondents that a cumulative opinion of the interview committee can very easily be given even during the interview and there is nothing peculiar about this fact.

(Para 11)

Further held, that on a conspectus of the arguments of learned counsel for the parties and keeping in mind the fact that these selections took place almost two decades ago, in my considered opinion the petitioners have not made out a case for quashing the selections.

(Para 12)

Arun Luthra, Advocate for Amar Vivek, Advocate, Pawan Kumar, Advocate, Gurdial Singh Jaswal, Advocate, Manpreet Singh, Advocate for P.S.Khurana, Advocate, and Baltej Singh Sidhu, Advocate, *for the petitioner(s)*.

T.N.Sarup, Addl.AG, Punjab

Rajiv Atma Ram, Senior Advocate with Rajinder Singh Mann, Advocate, Vivek Sharma, Advocate, *for the private respondents*.

AJAY TEWARI, J. (ORAL)

(1) This order shall dispose of the above mentioned seven writ petitions bearing CWP Nos. 7692, 10328, 10571, 9721, 7319, 7907 and 6285 of 1995. Since common questions of law and facts are involved therein, that is the reason they are being disposed of by this common order. For ready reference the facts are taken from CWP No.7692 of 1995.

(2) By this petition the petitioner(s) have challenged the selection of 46 + 3 Junior Engineers in the Rural Development and Panchayats Department. By an advertisement dated 05.02.1994, 26 posts of Junior Engineers(Civil) were advertised in which it was mentioned in passing that the mode of selection would be interview. Interviews were conducted in May/June, 1994. Ultimately by three appointment letters dated 11.04.1995 and 15.05.1995, 48 candidates were appointed. (It may be mentioned that

it is only the first 46 candidates appointed by two letters dated 11.04.1995 who were impleaded as party). The present writ petition was filed challenging these appointments on the following grounds:-

(i) The total number of appointments made were almost double of those advertised;

(ii) The process of selection was vitiated because marks of experience were given which were not mentioned in the advertisement;

(iii) That as per the record provided under the orders of this Court the marks obtained by the candidates in the interview have been shown in a consolidated form and individual marks have not been shown to have been given by the five member interview committee; and

(iv) The subsidiary argument which has been raised is that the experience certificates which were placed on the record by some of the petitioners were not taken into consideration.

(3) In reply the stand taken is that between the time the posts were advertised and the selection was made, 46 posts were lying vacant and it was felt that all the vacant posts be filled up. With regard to the three extra posts which were filled up, reliance was placed on the instructions dated 22.03.1957 which mandated that additional vacancies which arise within six months of the selection have to be filled up in pursuance to the same selection and no fresh advertisement is required for that purpose. It was further mentioned that a selection committee had formed a criteria whereby 50 marks were set aside for academic qualifications, 30 marks were mentioned for viva-voce/interview and 10 marks were stipulated for experience.

(4) With regard to the first ground, learned counsel for the petitioner(s) have relied upon *Virender Singh Hooda and others versus State of Haryana and another (1)* and in particular to para 57 thereof which is to the following effect:-

“Before concluding, a useful reference can also be made to the decision in the case of Prem Singh and ors. v. Haryana State

Electricity Board and ors., 1996(3) SCT 563 (SC): [(1996) 4 SCC 319] holding that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf."

(5) Learned counsel for the respondents have argued that this judgement did not notice the instructions of 22.03.1957. Learned counsel have argued that the reliance on this judgement is misplaced in so much as the petitioner in that case was not originally selected to the HCS but was claiming appointment on the strength of the 1957 instructions by asserting that vacancies had arisen within six months and he would be entitled as per his merit to be selected against such vacancy and this Court as well as the Hon'ble Supreme Court had upheld his claim.

(6) Learned counsel for the petitioners also placed on reliance on *Prem Singh and others versus Haryana State Electricity Board and others* (2), wherein the Hon'ble Supreme Court held as follows:-

" 13. In the present case, as against the 62 advertised posts the Board made appointments on 138 posts. The selection process was started for 62 clear vacancies and at that time anticipated vacancies were not taken into account. Therefore, strictly speaking, the Board was not justified in making more than 62 appointments pursuant to the advertisement published on 2.11.1991 and the selection process which followed thereafter. But as the Board could have taken into account not only the actual vacancies but also vacancies which were likely to arise because of retirement etc. by the time the selection process was

completed it would not be just and equitable to invalidate all the appointments made on posts in excess of 62. However, the appointments which were made against future vacancies - in this case on posts which were newly created - must be regarded as invalid. As stated earlier, after the selection process had started 13 posts had become vacant because of retirement and 12 because of deaths. The vacancies which were likely to arise as a result of retirement could have been reasonably anticipated by the Board. The Board through oversight had not taken them into consideration while a requisition was made for filling up 62 posts. Even with respect to the appointments made against vacancies which arose because of deaths, a lenient view can be taken and on consideration of expediency and equity they need not be quashed. Therefore, in view of the special facts and circumstances of this case we do not think it proper to invalidate the appointments made on those 25 additional posts. But the appointments made by the Board on posts beyond 87 are held invalid. Though the High Court was right in the view it has taken. We modify its order to the aforesaid extent. These appeals are allowed accordingly. No order as to costs.

(7) In reply to the aforesaid judgement learned counsel for the respondents have argued that in that case the instructions of 22.03.1957 were neither pleaded by the respondents nor were they noticed by the Court.

(8) The third judgement relied upon is **Surinder Singh and others** versus **State of Punjab and another (3)**, wherein also the Hon'ble Supreme Court held as follows:-

"16. Keeping the above principles in view, if we analyse the facts and circumstances of the present case, we find that no exceptional circumstance existed or there was any emergent situation for the State to deviate from the principle of limiting the number of appointments so advertised. In our view, the High

Court was right in setting aside the appointments of teachers over and above those advertised. The State accepted the judgment of the High Court and did not come up in appeal in this Court. However, to get over the situation created because of the fact that more vacancies of teachers were noticed during the period of interview, it appointed candidates more than the number of posts advertised on ad hoc basis and continued them as such till fresh process of selection was gone into. Admittedly, the process is on and in various writ petitions the High Court has been issuing directions from time to time extending the ad hoc appointments and in the meanwhile to complete the process of fresh selection. As noticed above, selection of 10,000 more candidates for appointment to various categories of teachers has already been completed and selection process of about 22,000 more such teachers has either been completed by now or under completion. We do not think at this stage that we should interfere in the matter and set the clock back particularly when we find no ground to invalidate the impugned judgement of the High Court. In the present appeals, there is no appellant who can claim to fall within the first 2461 posts for which advertisement was issued."

(9) Learned counsel for the respondents have argued that the facts in that case presented a very stark situation in so much as the State had advertised 2461 vacancies in 1992 but ultimately made appointments to 7737 posts and even in that case it was not shown to the Court that the instructions of 22.03.1957 were applicable. Learned counsel have further argued that in the present case reliance was placed on the aforesaid instructions by the respondents in their written statement but the same was not controverted in the replication. It has also been pointed out that in the advertisement itself it was stipulated that the number of posts may vary.

(10) The second and fourth i.e. subsidiary argument raised by learned counsel for the petitioner(s) is that firstly, it was not disclosed in the advertisement that there would be any marks for experience and secondly, that the experience certificates placed on the record by some of the

petitioner(s) were not considered. In response to this it has been argued by learned counsel for the respondents that in the advertisement no break up was mentioned but a reading of the advertisement would make it clear to any one that the selection would be made on the basis of academic qualifications, interview and experience because the applicants were asked to submit the certificates of their qualification and experience along with their applications and only such candidates would be interviewed who fulfilled those parameters. Further as regards the allegation that the experience of some of the petitioners was not considered, it was mentioned that the selection committee which decided upon the break up of marks had also decided that experience certificate only from Government, Semi Government and reputed companies like Gammon and IRCON etc. would be considered and it was specifically mentioned that experience certificates obtained from private contractors as well as experience certificates of those who had been working on daily wage basis shall not be considered. It was asserted that only such experience would be ignored or considered as the case may be. This stand has not been controverted in the replication.

(11) With regard to the third argument, learned counsel for the petitioner(s) assert that under the orders of this Court the original record was brought for their perusal and as per that original record individual marks have not been given by the members of the interview committee. This argument has been refuted by contending that there is no requirement in law that when an interview is to be conducted, every member of the board has to give individual marks. Even otherwise it has been argued by learned counsel for the respondents that a cumulative opinion of the interview committee can very easily be given even during the interview and there is nothing peculiar about this fact.

(12) On a conspectus of the arguments of learned counsel for the parties and keeping in mind the fact that these selections took place almost two decades ago, in my considered opinion the petitioners have not made out a case for quashing the selections.

(13) Petition is dismissed. No costs.