

Bhushan Kumar Puri

Vs

State of Punjab and Others

Civil Appeal No. 277 of 1978

(A. C. Gupta, A. P. Sen JJ)

28.11.1980

JUDGMENT

GUPTA, J. –

1. This is an appeal by special leave from a judgment and order of the Punjab & Haryana High Court dated November 14, 1977 allowing a writ petition made by the fourth respondent before us. By the impugned judgment the High Court set aside the decision of the Punjab Public Service Commission (hereinafter referred to as 'the Commission') selecting the appellant for the post of Export Promotion Officer, directed the Commission to "hold the selection afresh" and gave certain directions for the purpose. The judgment appealed from marks the second chapter in the dispute concerning the selection.

2. These are the relevant facts. On September 10, 1975 the Commission invited applications for the aforesaid post. Six candidates including the appellant before us were interviewed by the Commission on November 20, 1975 for selection. The appellant occupied the first place in the list of candidates selected by the Commission according to merit; the name of one Shamsher Singh figured second in the list. However, the appellant was not recommended by the Commission for appointment because he had not on the date of the interview passed the test in Punjabi. In the advertisement inviting applications for the post one of the conditions laid down was that the "candidates shall have to pass the test (of knowledge in Punjabi) held by the Commission before interview". Shamsher Singh was accordingly recommended by the Commission. The present appellant filed a writ petition in the Punjab & Haryana High Court challenging the Commission's decision recommending Shamsher Singh for appointment. It appears that Shamsher Singh's sister was married to the son of the Chairman of the Commission Giani Lal Singh who presided over the meeting held on November 20, 1975 for selection. By his judgment and order dated August 2, 1977 Harbans Lal, J. who heard the matter allowed the writ petition and set aside the decision of the Commission selecting shamsher Singh observing "... it cannot be said that respondent 3 as Chairman of the Commission could have possibly applied his mind dispassionately while making selection of respondent 4 (Shamsher Singh) to the post and rejecting the other candidates including the petitioner". The learned Judge added that the Commission would be "at liberty to make the selection afresh". No appeal was preferred from this judgment. The Commission met again sometime in September 1977 to select a candidate for the post. Giani Lal passed the test in Punjabi on July 5, 1976. The Commission examined the qualifications, experience and the record of performance of the candidates at the interview already held and prepared a list in order of merit which was as follows :

1. Bhushan Kumar Puri (appellant)

2. K. Shamsheer Singh

3. Gobinder Singh Randhawa (respondent 4)

The appellant was recommended by the Commission for appointment. Respondent 4 challenged the selection of the appellant by a writ petition filed in the Punjab & Haryana High Court. The High Court by the impugned judgment set aside the selection of the appellant for the post on the ground that "the fresh selection has not been made in accordance with the principles of natural justice" and directed the Commission to "hold the selection afresh after giving an opportunity to all the candidates of being heard at personal interviews". The Commission was further asked to take up to the date of the interview" to be held. The priority of this order is challenged by the appellant in the present appeal.

3. The Commission filed an affidavit in the High Court answering the allegations made in the writ petition filed by the fourth respondent. The affidavit states inter alia :

While... quashing the selection of Sh. K. Shamsheer Singh as Export Promotion Officer, the Hon'ble High Court left it open to the Commission to make the selection afresh keeping in view the observations made by them in the judgment. Accordingly, the whole case was reviewed by the Commission without Giani Lal Singh who had in the meantime retired. Respondent 4 (in the writ petition : the present appellant) was not earlier selected by the Commission as he had failed to qualify in the Punjabi test held by the Commission.... By the time the Hon'ble High Court gave its judgment on August 2, 1977, respondent 4 had passed the Punjabi Parbodh Examination held by the Language Department on July 5, 1976. This fact was taken into account by the Commission while considering the entire case afresh in the light of the judgment of the High Court... the Commission did not consider it necessary to readvertise the post and call the candidates again for interview. The Commission in their meeting held on September 1, 1977 went through the qualifications, experience and record of the performance of the candidates at the interview already held, and prepared the merit list for the post...

4. It appears from the affidavit that the Commission did not consider it necessary to readvertise the post or to call the candidates again for interview. There is also no direction either in the judgment of Harbans Lal, J. or in the judgment appeared from for readvertising the post. None of the parties who appeared before us also questioned the propriety of the decision taken by the Commission to confine the selection to among the candidates who had applied in response to the advertisement issued on September 10, 1975. It is therefore clear that the fresh selection had to be made in accordance with the conditions appearing in the said advertisement, one of which was that the candidates must pass the test in Punjabi before interview. If the Commission proposed to make the selection on the basis of the performance of the candidates at the last interview, the appellant was clearly not eligible for selection as he had not passed the test then. And if the Commission took note of the fact that the appellant had passed the test since then, it is only just that they should also take into consideration any qualification acquired by the other candidates in the meantime. It is to be remembered that the selection was being made about two years after the original selection had been set aside. If in these circumstances it is held, as the High Court has done, that the candidates should be interviewed again before the selection was made, we find no valid reason to interfere with that decision. We do not however think as the High Court does that the Commission has violated any principle of natural

justice and we affirm the order of the high Court on the grounds mentioned above. We realise that it is a little hard on the appellant to have to compete again for the post for which he was twice preferred by the Commission on merit, but for the reasons we have already stated it is not possible to uphold the selection.

5. The appeal is dismissed but in the circumstances of the case without any order as to costs.

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