

# SUPREME COURT OF INDIA

Gurmeet Pal Singh

Vs.

State of Punjab

C.A.No.4853 of 2018

(J.Chelameshwar and Sanjay Kishan Kaul, JJ.,)

15.05.2018

## JUDGMENT

**Sanjay Kishan Kaul, J.,**

SLP(C)No.33680/2013

1. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Punjab Superior Judicial Service Rules, 2007 (hereinafter referred to as the 'said Rules') were notified on 31.08.2007 duly published in the Gazette of 03.09.2007 for regulating the recruitment and the conditions of service of the persons appointed to the Punjab Superior Judicial Service. The method of appointment as per Rule 7 of the said Rules was both from amongst the members of the Punjab Civil Service (Judicial Branch), as well as direct appointment from amongst the eligible advocates on the basis of written test and viva-voce conducted by the High Court. Sub-clause (c) of Sub-rule (3) of Rule 7 dealt with the latter direct appointment for which 25 per cent of the posts were reserved. The appeals in question relate to the process of the direct recruitment under these Rules at the first instance, carried out in pursuance of the advertisement issued on 02.02.2008.

2. In terms of the aforesaid advertisement, applications were invited for selection of twenty one (21) candidates, with a further breakup of ten (10) from General category, six (6) from Scheduled Caste ('SC') category, two (2) from Backward Class category, one (1) from Ex-Serviceman (General) category, one (1) from B.C. (Ex-Serviceman) category and one (1) from Physically Challenged category of Locomotor or Orthopedic Disability, under Rule 7(3)(c) of the said Rules. It may be noted that the advertisement also stated that 'the number of posts will be subject to variation.' Note 4 to the advertisement qua the Physically Challenged category also stated that "if no candidate is found suitable or medically fit under this category, the post shall be reverted to the General category candidate."

3. The appellants before this Court are all candidates, who appeared for the examination. It may be noted that none had assailed the advertisement on any account prior to the declaration of the result. On declaration of the result of the written examination, viva-voce

was held and there was variation in the merit position of the candidates in the combined marks as compared with just the written examination. The appellants all belong to the General category and their merit position was beyond the ten (10) candidates whose recruitment was envisaged under the advertisement. It may be noted that one of the SC candidates obtained marks to merit consideration without the benefit of reservation and consequently nine (9) of the General category candidates were recruited against the ten (10) posts.

4. There were five developments, which need to be taken note of, in view of the pleas advanced on behalf of the appellants. The first was the elevation of Justice Sabina as a Judge of the High Court of Punjab & Haryana on 12.03.2008, and, thus, the submission of the appellants is that one more seat for General category became available post issuance of the advertisement and since the number of posts were subject to variation, this vacancy should be made available to the General category. The second is arising from a defect in the advertisement inasmuch as no reservation for ex-serviceman was envisaged, as Rule 3 of the Punjab Recruitment of Ex-Servicemen Rules, 1982 (hereinafter referred to as the 'Ex-Servicemen Rules') exempted the applicability of these Rules to the Punjab Vidhan Sabha Secretariat Service and the Punjab Superior Judicial Service. The High Court also took cognizance of this fact and, thus, the reservation being not in accordance with law, resolved appropriately in a meeting of the Judges held on 25.07.2008. The meeting noted that the vacancy, which was advertised as Ex-Serviceman (General) category should also go to the General category. Thus, a second seat as per the appellants became available for the General category. The third is the absorption of two Presiding Officers of Fast Track courts against which vacancies for direct recruitment purportedly under Rule 7(2) of the said Rules even though the present recruitment exercise was under Rule 7(3) of the said Rules. Fourthly, no candidate was available in the physically challenged category, but instead of carrying it to the General category as per Note 4 of the advertisement, the vacancy was carried forward. Finally, the advertisement was issued on the basis of a total cadre strength of 107 posts, while actually the total cadre strength on the date of advertisement was 111, i.e., there were four more posts, which could have been filled in and the General category would have got two more seats and two more candidates could have been absorbed in the General category.

5. The endeavor of the appellants by filing writ petitions before the Punjab and Haryana High Court, however, was not successful and in terms of the common judgment dated 19.08.2013 all the writ petitions were dismissed. In the course of the last decade since the recruitment process took place in the year 2008, similar recruitment of advocates was carried out five times through different notifications. Three of the candidates before this Court took their chances in different examinations. The details of these are disclosed as per Annexure A to the additional affidavit filed on behalf of respondent No.2/the High Court, which is reproduced hereinunder:

Sr. No	Candidate's Name	Father/Husband's Name	Notification dated 2.2.2008	Rank as per Merit List	Notification dated 21.10.2009	Notification dated 8.4.2011	Notification dated 2.1.2012	Notification dated 29.4.2013	Notification dated 23.3.2015
1	Gurmeet Pal Singh	Santokh Singh	Appeared in the Exam	11	-	Appeared in the Exam	Appeared in the Exam	Appeared in the Exam	-
	Kadambini	Mukand Lal Arora	Appeared in the Exam	13	-	Appeared in the Exam	Appeared in the Exam	Appeared in the Exam	Appeared in the Exam
	Anuradha	Bhavnes Shukla	Appeared in the Exam	12	-	-	-	-	-
	Preeti Bhargav	Narinder Bhargav	Appeared in the Exam	15	-	-	-	-	-
	Parmod Kumar	Satyapal Sharma	Appeared in the Exam	16	-	Appeared in the Exam	-	Appeared in the Exam	-

6. The appellants, however, contend that if they have been wrongfully excluded, whether they appeared in a subsequent examination or not, or whether they were successful or not in the subsequent examination, would not be material. It is also the case of the appellants that though a decade has passed since the examination was held, the delays in the adjudication process should not deprive them of being appointed even if there have been subsequent recruitments, and if that aspect weighs with the Court, the relief can be suitably modified qua the issue of seniority. advocate recruits to the High Court:

7. The elevation of Justice Sabina on 12.03.2008 is a matter of fact. It is not also in dispute that the advertisement was issued prior to such elevation on 02.02.2008 and the advertisement noted the possibility of the number of posts being subject to variation. However, in our view, this would not mandate the inclusion of a post which fell vacant subsequently, nor can there be even otherwise a compulsion on the High Court to necessarily expand the scope of the number of persons to be recruited. In fact, the persons, who may have become eligible post the advertisement would suffer a prejudice were subsequent vacant posts to be included against an earlier advertisement. The plea based on the vacancy of this seat is, thus, completely devoid of merit.

B. The provision wrongfully made in the advertisement reserving two seats for Ex-Servicemen:

8. The advertisement dated 02.02.2008 did make a provision for two seats for Ex-Servicemen - one in General category and one from Backward Class category. However, such a reservation had no force of law in view of Rule 3 of the Ex-Servicemen Rules, carving out an exception in respect of the Punjab Vidhan Sabha Secretariat Service and the Punjab Superior Judicial Service. The High Court having noticed this fact, abandoned the process of

recruitment for this category in terms of the minutes of meeting dated 25.07.2008. It did initially resolve that the vacancy advertised for Ex-Servicemen (General) would also go to the General category but ultimately that is not what was done. The said seat was, however, made available for absorption of the Judges from the Fast Track court. In fact, there were two Judges recruited from the Fast Track court - one against this post and the other against the vacancy, which arose on account of the elevation of Justice Sabina through a different exercise, which will be discussed later on.

C. The recruitment of two Judges from Fast Track Courts:

9. The Fast Track courts owe their origin to the allocation of funds under the 11th Finance Commission to deal with long pending cases, particularly Sessions cases. A time bound utilization within a period of five years was envisaged and, thus, various State Governments were required to take necessary steps to establish such courts. We may notice here that obviously the regular cadre strength of Judges has been awfully inadequate to meet the pendency and inflow of cases, one methodology could be to increase the cadre strength itself. There have been periodic reviews for this purpose in the last few years. However, not having done that at the relevant stage, a short cut method was envisaged to, at least, temporarily create the Fast Track courts for certain category of cases. However, since the fund from the Central Government ceased after five years, the question arose as to what was to happen to these Fast Track courts especially keeping in mind that a number of the presiding officers had been appointed directly from the Bar. The challenge laid to the constitutionality of this scheme for Fast Track courts was repelled in *Brij Mohan Lai v. Union of India & Ors.*<sup>1</sup>. In para 10 of the judgment, directions were issued to deal with the initial teething problems of the Scheme. Direction No.4, after the earlier directions recorded that preference will be given to appointment on ad hoc promotions, followed by retired Judges, stipulated as under:

“4. The third preference shall be given to members of the Bar for direct appointment in these Courts. They should be preferably in the age group of 35-45 years, so that they could aspire to continue against the regular posts if the Fast Track Courts cease to function. The question of their continuance in service shall be reviewed periodically by the High Court based on their performance. They may be absorbed in regular vacancies, if subsequent recruitment takes place and their performance in the Fast Track Courts is found satisfactory. For the initial selection, the High Court shall adopt such methods of selection as are normally followed for selection of members of the Bar as direct recruits to the Superior/Higher Judicial Services.”

10. The stand of the High Court is that it is in furtherance of the aforesaid judgment that a provision was made for absorption of the Judges appointed to the Fast Track court on a permanent basis.

11. The appointment was made vide order dated 20.06.2008 and two such Judges in the Fast Track court against the two vacancies, i.e., one of Ex-Servicemen (General) category and the second which occurred on elevation of Justice Sabina from the subordinate judiciary to the High Court. Such selection was preceded by a Selection Committee constituted by the High

Court in order to assess the suitability for absorption of the Judges. The Judges were marked on a benchmark of 100 marks, out of which 50 marks were from written test, 25 marks for viva-voce and 25 marks for performance as a Judge of the Fast Track court. These two obtained the highest marks qua the vacancies for Punjab as recorded in the minutes of the meeting dated 18.03.2008.

12. The aforesaid shows that a completely different process was followed for absorption of the Judges from the Fast Track court. The moot point, however, remains whether one of the vacancies in the advertisement, which arose ought to have been utilized for absorption of these Fast Track court Judges, which, in turn, affected the senior- most, i.e., Gurmeet Pal Singh. In a way, Gurmeet Pal Singh suffered the consequences both of a more meritorious candidate from the SC category being found eligible, because of which he went one slot down. But then it is a well-established legal position that members belonging to the reserved category, who get selected in open competition on the basis of their merit have a right to be included in the General/Unreserved category and are not to be included in the quota reserved for the SC category (*Samta Andolan Samiti v. Union of India*<sup>2</sup>).

13. Insofar as the adjustment against the seat which was made available on account of the wrongful reservation for Ex-Servicemen, we cannot lose sight of the fact that the said Mr. Gurmeet Pal Singh made an endeavour by taking three successive subsequent exams held - para 16 on 08.04.2011, 02.01.2012 and 29.04.2013, but was unsuccessful (chart reproduced above). Not only that, there has been a passage of a decade since the initial recruitment and though the appellants cannot be blamed for judicial delays, it is really not possible to put the clock back for all the aforesaid reasons.

14. We are, thus, not inclined on this aspect to interfere with the recruitment process.

D. Non-availability of candidate with disability:

15. The plea based on an inherent right in view of the wording of the advertisement qua the seat meant for person with disability when no candidate is available is intrinsically flawed. The provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, are towards the social objective of accommodating people with physical disability. We find nothing wrong in carrying forward the vacancy for the future.

E. The larger recruitment was possible since the cadre strength was more:

16. The undisputed fact is that the advertisement was issued on the basis of a cadre strength of 107. Twenty-seven (27) posts would arise in the category in question and six (6) were already occupied and, thus, the advertisement was issued for twenty-one (21) posts. The advertisement was not challenged by any of the appellants. It is a well settled principle of law that when a candidate appears in an examination without objection and is subsequently found to be not successful a challenge to the process is precluded. In a recent judgment in *Ashok Kumar & Anr. v. State of Bihar & Ors.*<sup>3</sup>, this principle has been re-emphasised by

referring to the earlier judgments on this point starting from *Chandra Prakash Tiwari v. Shakuntaia Shukia*<sup>4</sup>. Thus, undoubtedly the appellants not having challenged the advertisement at the relevant point of time, cannot be permitted to contend that having not made the mark in the cut off for the select list, something must be done to somehow accommodate them. The plea of the existence of a larger number of posts is in this direction. No doubt every endeavor should be made to fill up the existing vacancies and prospective vacancies keeping in mind the judgment in *Maiik Mazhar Suitan & Anr. v. U.P. Public Service Commission & Ors.*<sup>5</sup>. However, there cannot be a blanket proposition that the advertisement is defective merely because every vacancy which existed or which is contemplated is not taken into account. Certainly, a subsequent vacancy arising from an elevation can hardly be treated as in contemplation.

17. We agree with the contention advanced by learned counsel appearing for the High Court, more so when merely because the name of a candidate finds a place in the select merit list does not give an indefeasible right to appointment as well and it is always open to not even fill up a vacancy. (*Kulwinder Pal Singh & Anr. v. State of Punjab & Ors.*<sup>6</sup>).

18. It is also the plea of learned counsel appearing for respondent No.2 that the cadre consisted of only 107 posts. This is stated to be quite apparent from the gradation and distribution list of officers of The Judicial Department, Punjab corrected up to 01.01.2008. The strength, including permanent and temporary has been mentioned as 109. However, at serial No.6, under the temporary post are two temporary posts of Additional District & Sessions Judges sanctioned by the Punjab Government letter dated 27.01.2004 for setting up of special courts at Patiala and Jalandhar. These courts were actually not set up till much later. It was also contended that even if the cadre strength was 109, then the particular category would be entitled to 27.25 (25% of 109 = 27.25) posts, with this six (6) posts filled up. Therefore, once again, one would come to 21 posts. The cadre strength of 111 relied upon by the appellants is available from the Gradation and Distribution List of Officers of the Judicial Department, Punjab corrected up to 31.01.2010, i.e., which was subsequent to the advertisement and the recruitment process. Thus, the appellants cannot get any relief even on this ground.

#### Conclusion:

19. We have dealt with the pleas advanced before us on behalf of the appellants. We have, of course, perused the impugned order. We may note that the line of attack before the High Court appeared majorly to be on different pleas, though it cannot be said that the issues raised before us have been raised for the first time. The focus was, however, elsewhere. We have, thus, dealt with the pleas, which have been advanced before us.

20. We are, thus, unable to grant any relief to the appellants in the present case.

21. We may, however, note in the end that one of the appellants, Ms. Kadambini, Advocate, argued the appeal in person and, without taking anything away from the endeavour of the

other learned senior counsel, did a commendable job. However, that cannot be a ground to accommodate the said appellant.

22. The appeals are accordingly dismissed leaving the parties to bear their own costs.

**Judgment Referred.**

<sup>1</sup>(2002) 5 SCC 0001

<sup>2</sup>(2014) 14 SCC 0745

<sup>3</sup>(2017) 4 SCC 0357

<sup>4</sup>(2002) 6 SCC 0127

<sup>5</sup>(2008) 17 SCC 0703

<sup>6</sup>(2016) 6 SCC 0532