

**2023 PLRonline 0130**

**(ID 441601)**

**PUNJAB AND HARYANA HIGH COURT**

Before : Justice Sanjeev Prakash Sharma.

Surinder Kumar v. The Executive Officer, Block Andana at Moonak, District Sangrur

CWP-9179 of 1997 (O&M)

Reserved on 04.12.2023 Decided on: 13.12.2023

**Service matter - Petitioner's challenge to the selection conducted by the respondents in the year 1997 on the basis of interview alone and the petitioner having participated therein and remained unsuccessful cannot be held to be maintained - A person cannot approbate and reprobate at the same time - Writ dismissed - Constitution of India, Article 226 - Punjab Samitis and Zila Parishad Service Rules, 1965, Rule 8.**

**Cases referred:**

**1.** *Union of India and Ors vs. Major S.P. Sharma and Ors, 2014 (4) SCR 327.*

**2.** *Tajvir Singh Sodhi vs The State Of Jammu And Kashmir, 2023 AIR (SC) 2014.*

*Ms. Neha Matharoo, Advocate, for the petitioner(s). Mr. Raj Kumar Garg, Advocate for respondents No.1 to 3. Mr. Amit Sharma, Advocate for respondent No.4. Mr. Raman B. Garg, Advocate with Mr. Mayank Garg, Advocate, for respondent No.5.*

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**SANJEEV PRAKASH SHARMA, J. -**

**1.** This Writ Petition has been filed under article 226 of the Constitution of India for issuing a writ of certiorari for quashing the selection of clerks by the respondents on the basis of an interview held on 02/05/1997 and to issue a writ of mandamus to prepare the merit list and appoint the Petitioner to the post of clerk/ typist as he his more meritorious.

**2.** Learned counsel for the Petitioner states that the Petitioner was asked to appear for an interview on 02.05.1997, by the employment exchange, for two posts of Steno typist cum clerks. On the given date, 18 candidates appeared for the two abovementioned vacant posts. The counsel submits that no selection committee was constituted, neither any typist test was conducted, and further no written examination was held nor any certificates of the candidates were perused and no merit list was prepared, and only the names of the candidates, the father's names and their residence addresses were asked.

**3.** It is further contended by the learned counsel for the petitioner that two candidates were

arbitrarily chosen for the said post, one of them being Jasbir Singh, who was allegedly a close relative of the Chairman, and the other being Paramjit Kaur, wife of Jarnail Singh, who was illegally selected with mala fide intentions. He further pleads that though the Petitioner was higher in merit and possessed the qualifications of a steno-typist in Punjabi language, he was still not selected as opposed to the two selected candidates, who were lower in merit.

**4.** On the contrary, the learned counsel for the respondents' states that the two posts were of only Clerk, for which no typist test or written test was required to be conducted. Furthermore, it is stated that a selection committee of five persons was duly constituted to take interviews of the 16 candidates who appeared on the said date. It is further categorically denied that only the names and addresses of candidates were asked, but a proper interview was conducted and marks were awarded to each candidate out of 20. The counsel further states that the petitioner scored 13 marks in the interview, whereas the two selected candidates scored the highest marks when the merit list was prepared. It is denied that there was any favouritism on the part of the respondents and that a fair procedure for recruitment was followed as per Rule 8 of Punjab Samitis and Zila Parishad Service Rules, 1965.

**5.** Learned counsel for the petitioner further submits that the two selected candidates could not have been selected for the said post as they did not belong to the same jurisdiction where the Employment Exchange Moonak was located, and that they got their names registered so as to be eligible for the said post by hook or by crook. He submits that the Chairman of the Block Samiti got the two candidates selected by misusing his position and extended an undue favour to get his relatives selected, and thus the selection is not fair.

**6.** I have heard the arguments.

**7.** As per the advertisement dated 13/12/1996, it states that the post was of clerk and not of steno-typist-cum-clerk, and therefore, there was no requirement of a typist certificate nor was a typist test required to be conducted for the said posts. Further, no candidate was required to have a senior secondary certificate. Therefore, the contention of the Petitioner that the selected candidates were not eligible for the said post stands no merit.

**8.** It is noticed that the petitioner alleged that there was no proper selection committee constituted and that no procedure was followed for selection of the candidates stands unsubstantiated, hence un-proved, as a fair procedure of selection was followed according to Rule 8 of the Punjab Samitis and Zila Parishad Service Rules, 1965 and a proper interview was conducted and marks out of 20 were awarded to each candidate, after which the 2 meritorious candidates were selected for the said post.

### **"Rule 8**

**Method of recruitment and qualifications.** – (1) *The method of recruitment to the posts in the Service and their qualifications shall be as specified in columns 4 and 5 of Appendix A to these rules:*

*Provided that the Government may, if and when necessary, alter the qualifications specified for any post in Appendix A to these rules.*

*(2) The recruitment by promotion to the Service shall be made on the basis of seniority-cum-merit and no person shall be entitled to claim promotion on the basis of seniority alone. Where the seniority is ignored the recruiting authority shall record the reasons therefor in writing.*

*(3) If a candidate possessing the qualifications specified in column 5 of Appendix A to these rules is not available for appointment by promotion, that post may be filled in by direct recruitment.*

*(4) Out of the vacancies to be filled in by direct recruitment, [Twenty five]\* per centum of the vacancies shall be filled in from amongst candidates belonging to Scheduled Castes or Scheduled Tribes and [five]\* per centum of the vacancies shall be filled in from amongst candidates belonging to backward classes."*

**9.** The contention alleging the illegal selection and malafides on part of the selection committee has again not been proved by the petitioner as there is no cogent evidence to substantiate the allegation, in this regard the Apex Court in **Union of India and Ors vs. Major S.P. Sharma and Ors, 2014 (4) SCR 327** which states thus:-

*"86. Analysing entire facts of the case and the material produced in Court and upon an exhaustive consideration of the matter, we are of the definite opinion that the power of pleasure exercised by the President in terminating the services of the respondents does not suffer from any illegality, bias or malafide or based on any other extraneous ground, and the same cannot be challenged on the ground that it is a camouflage. As discussed above, the onus lay on the respondent- officers who alleged malafides. No credible evidence or material produced before the Court impels us to come to the conclusion that the order of termination is baseless or malafide."*

**10.** It is apropos to state that the allegation regarding the fact that there was no proper selection process adhered to stands sans merit. The apex court in a recent judgment in **Tajvir Singh Sodhi v. The State Of Jammu And Kashmir, 2023 AIR (SC) 2014** held as under:-

*"13. The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast vide a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:*

*i) In **Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576**, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.*

ii) In **Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309**, an advertisement was issued inviting applications for appointment for the post of physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the reason that the same would not be maintainable after participation in the selection process. The pertinent observations of this Court are as under:

*“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”*

**11.** In view of the aforesaid law as held by the Supreme Court, the petitioner’s challenge to the selection conducted by the respondents in the year 1997 on the basis of interview alone and the petitioner having participated therein and remained unsuccessful cannot be held to be maintained. A person cannot approbate and reprobate at the same time.

**12.** In view of the above, the present Writ Petition stands dismissed.

**13.** All the pending applications in this Writ Petition stand disposed of accordingly.