

State Of Punjab And Ors vs Manjit Singh And Ors on 16 September, 2003

Equivalent citations: AIR 2003 SUPREME COURT 4580, 2003 (11) SCC 559, 2003 AIR SCW 5362, 2003 LAB. I. C. 3679, 2004 (2) SERVLJ 25 SC, 2003 (8) ACE 534, 2003 (6) SUPREME 732, 2003 (5) SLT 593, 2003 (7) SCALE 556, (2004) 2 SERVLJ 25, 2003 (10) SRJ 415, 2003 (4) SCT 310, (2003) 6 ALL WC 4776, 2004 SCC (L&S) 73, (2003) 4 ESC 633, (2003) 11 INDLD 43, (2003) 3 CURLR 624, (2004) 1 LAB LN 71, (2003) 6 SERVLR 63

Author: Brijesh Kumar

Bench: Brijesh Kumar, Arun Kumar

CASE NO.:

Appeal (civil) 2305-06 of 1999

PETITIONER:

STATE OF PUNJAB AND ORS.

RESPONDENT:

MANJIT SINGH AND ORS.

DATE OF JUDGMENT: 16/09/2003

BENCH:

BRIJESH KUMAR & ARUN KUMAR

JUDGMENT:

JUDGMENT 2003 Supp(3) SCR 856 The Judgment of the Court was delivered by BRIJESH KUMAR, J.: The above noted appeals involve a common question of law, hence they have been heard together and are being disposed of by this common judgment. There may be some minor differences here and there on facts but without effecting the main question involved, hence for the purposes of dealing with the matter, we refer to the facts in Civil Appeal Nos. 2305-06/1999. The main question for our consideration in these appeals is as to whether it was competent for the Punjab Public Service Commission (for short 'the Commission') to resort to screening test with a view to shortlist the number of candidates to bring it to the ratio of three to five candidates per vacancy and further, whether keeping in view the efficiency required for the services in respect of which selection and appointments was to be made, could a written test be held to fix some minimum cut off marks, where process of selection was by interview of eligible candidates belonging to reserve category. The High Court, in the judgments impugned in the above noted appeals, held that the action of the Commission in holding the screening test and prescribing the minimum qualifying marks was unreasonable, arbitrary and discriminatory. Hence, gave a direction that the Commission

would interview the petitioners if not already interviewed and declare the result of the selection as per their merit within the time specified. The Commission has preferred the above noted appeals along with the State of Punjab as one of the appellants. The main thrust of the learned counsel appearing on behalf of the Commission is that the commission is a constitutional and independent authority and it is its duty to make an endeavour to secure efficiency in the public administration by selecting the suitable candidates for the public services. While discharging such a duty, it is submitted that it would not be subservient to the direction of the government unless permissible under the law. Thus, to the extent indicated above, there may be some conflict in the stand between the State Government and the Commission. But both are impleaded as appellants, the lead was taken by the learned counsel appearing for the Commission, who virtually, alone made his submissions.

The brief facts of the case are that an advertisement No. 4 of 1997 was issued by the Commission for recruitment of 500 Medical Officers in P.C.M.S. (Class-I). In all 303 Scheduled Castes (General) (for short S.C.) candidates applied. The candidates belonging to other Reserved categories like S.C. (Balmikis and Majhbi Sikhs) also applied. The Commission scrutinized the applications and notified to hold a screening test on 28.9.1997 for all categories of candidates. So far S.C. candidates are concerned, out of 303 applications, 279 appeared as S.C. (General) candidates out of which 59 could clear the test. To complete the details of the break-up of the number of seats and reservation etc. it may be indicated that out of 500 vacancies, 125 were reserved for S.C. candidates 50 per cent of which, namely 62 posts for Balmikis and Majhbi Sikhs and the remaining for the general category of S.C.s. Only 27 persons belonging to Balmikis and Majhbi Sikhs applied out of which only four could clear the test. The Commission fixed 45% cut-off marks for general category candidates and 40% cut off marks for S.C. candidates for their consideration for the selection. The prescribed mode of selection was only interview of eligible candidates on the basis of their educational qualifications.

That State Government has issued instructions vide letters dated 14.5.1969 and 5.5.1970, indicating the circumstances in which it would be appropriate to hold a test viz. where the number of candidates in the reserved category is more than the number of seats available, a competitive test could be held but no test is to be held where the number of candidates available may be equal or less than the number of the seats. The letters dated 14th May, 1969 and 5th May, 1970 issued by the Punjab Government are quoted below :

"No. 3925/6:S:W:/9778 ANN.P-7 From The Secretary, Govt. of Punjab, Scheduled Castes and Backward Classes Department To All heads of departments, Commissioners of Divisions, Deputy Commissioners, registrar, Punjab & Haryana High Court, District and Sessions Judges and Sub-Divisional Officers (Civil) in the State.

Dated Chandigarh 14 May, 1969.

Sub: Reservation for members of Scheduled Castes and Backward classes in the Punjab State Government Services.

Sir, I am directed to address you on the above mentioned subject and to say that sometimes written examination is held for candidates of Scheduled Castes and Backward Classes at the time of recruitment in addition to the minimum prescribed qualifications, as a result the qualifications of the scheduled caste and backward classes candidates against reserved posts become higher and the candidates belonging to scheduled castes and backward classes who possess minimum prescribed qualifications for the post/posts are not appointed.

2. The government, after considering this matter, has decided that scheduled castes/backward classes candidates who possess minimum prescribed qualifications should not be put to any such test that may deprive them of the posts reserved for them. In case appointing authority/recruiting institution consider it necessary can hold some other test among the scheduled castes candidates in order to test the level of their ability. But the posts reserved for them should be given to them according to their qualification. The meaning of these instructions is that the reserved posts be offered to scheduled castes/backward classes candidates who fulfill the minimum prescribed qualifications so that they can get their due right in the state services.

The receipt of this letter may be sent.

Yours faithfully, Sd/-

Secretary, Govt. Punjab Scheduled Castes and Backward Classes Department."

"ANN.P-8 From The Secretary, Govt. of Punjab, Scheduled Castes and Backward Classes Department To The Sec. Punjab Service Commission, Patiala.

Memo No. 1622 V.K.A. (W)-2-69/l 1246 Dated Chandigarh 5th May, 1970.

Sub: Reservation for persons belonging to Scheduled Castes and Backward classes in the Punjab State Government Services.

Yours attention is drawn to your letter No. 198/69.C.A.G. dated the 22nd December, 1969 on the subject cited above.

2. In this connection, it is also clarified that the Directions issued vide Pb. govt. letter No. 3925-6-S.W.-69/9778, dated 14.5.1969, are applicable on the recruitments made through interview or other sources except the recruitments made through the competitive examinations. For the posts, which are to be filled in through the competitive examinations, the candidates belonging to the Scheduled Castes and Backward Classes who will acquire the minimum prescribed standard of merit will be considered against the reserved posts and the completion of their suitability will be held amongst themselves.

3. So far as the question of filling up the vacancies by way of interview or some other source is concerned, the directions mentioned in the aforesaid letter of the Punjab

government are quite clear., meaning thereby the candidates belonging to scheduled caste/Backward Classes possessing minimum qualification or experience should not be put to any test to check their suitability for appointment against reserved post. However, the Scheduled Castes candidates can be put to test among themselves to ascertain the merit.

4. It is also pointed out that if the eligible candidates belonging to these castes and classes outnumber the posts reserved for them, in such cases the deserving candidates having higher qualifications from amongst those candidates be recommended according to the number of reserved posts.

Sd/-

Secretary, Pb. Govt.

Scheduled Castes and Backward Classes Welfare Department."

The Resolution of the Public Service Commission upon which main thrust has been provided, reads as follows :

"21.10.91 A meeting of the Commission was held today, the 21st October, 1991, at 12.30 P.M. to discuss the criteria for screening the candidates for various posts advertised from time to time.

The Commission decided to take screening test for various posts in order to shortlist the candidates. It has also been decided that the number of candidates to be called for interviews shall be limited to 3-5 times the number of vacancies notified by the government category-wise.

But in order to ensure minimum norms of efficiency and standards in public administration, the Commission examined the matter in depth and decided that in future, no candidate belonging to the general category, shall be called for interview unless he obtains 45% marks in the screening test and in the case of Scheduled Caste/Scheduled Tribes and Backward Classes no candidate shall be called for interview unless he obtains 40% marks, in the said test.

Sd-

Chairman, Members & Secretary 21.10.1991"

(Emphasis supplied) The other resolution on which emphasis has been laid and which is also reflected in the tenor of the arguments of the learned counsel for the Commission, reads as under :

"15.4.97 The Commission placed on record that it is a constitutional and independent authority and plays a pivotal role in selections and appointments of persons to public service. It endeavours to secure efficiency in public administration by selecting suitable persons for appointment of public service. It has to perform its duty in an independent and objective manner without any influence or direction of any other authority. It is not subservient to the directions of the Government unless such directions are permissible by law. The Commission is fully competent and duty bound to hold competitive examinations and conduct interviews for selecting suitable candidates as per the criteria fixed by it as long as it does not militate against the law."

The High Court, in the impugned judgment, referring to another decision of a Division Bench on the same point in Dr. Lovekesh Kumar & 4 others, and taking into account the facts of the case in hand, came to the conclusion that the decision of the Commission to hold a screening test was discriminatory and arbitrary.

Now advertent to the point under consideration, it may be observed that so far the powers and functions of the Commission in shortlisting of candidates is concerned, there can certainly be no doubt about it. Say for example 10,000 candidates apply for recruitment to 100 posts, it would obviously not be possible to take full test/examination and interview of such large number of applicants, though eligible. In that event shortlisting of the candidates by screening out those, in respect of whom it would serve no purpose to call them for further test, may be excluded by adopting the method of screening test. Generally speaking a ratio of 3-5 candidates for one post is normally accepted depending upon the number of seats. Therefore, for 100 posts the selecting body may in order of merit take out about first 500 candidates for further tests/interview. The rest of the candidates would be screened out. No candidate excluded by adopting such a method for shortlisting can raise any grievance whatsoever.

But for such shortlisting as indicated above, it is not necessary to fix any minimum qualifying marks. Any candidate on the top of the list at number 1 down upto 500 would obviously constitute the shortlisted zone of consideration for selection. For the purpose of elaboration it may be observed that in case some cut-off marks is fixed in the name of shortlisting of the candidates and the number of candidates obtaining such minimum marks, suppose is less than 100 in that event screening test itself will amount to a selection by excluding those who though possess the prescribed qualification and are eligible for consideration but they would be out of the field of consideration by reason of not crossing the cut-off marks as may be fixed by the recruiting body. This would not be a case of shortlisting. In shortlisting, as observed above, any number of candidates required in certain proportion of the number of vacancies, they may be shortlisted in order of merit from serial no. 1 upto the number of candidates required.

In the present case, the stand of the appellant Commission is that for medical services where the members of service have to deal with the health and life of the people, they must have some minimum standard of efficiency and it is the bounden duty of the Commission to ensure the same. It is perhaps with this view in mind that the Commission fixed 45% minimum qualifying cut-off marks

for general category candidates and 40% cut-off marks for Scheduled Caste candidates. We feel, here lies the fallacy in the whole reasoning of the Commission. It is no doubt true that the Commission is an independent and autonomous body and has to work without influence of any authority or the government. It is rather under duty to act independently. But at the same time the fact cannot be lost sight of that the State Government is competent to lay down the qualifications for different posts, and frame rules for the purpose or take policy decisions which may of course not be against the law. In this context, we may refer to the provisions contained under Article 320 of the Constitution. It reads as under :

"Article 320. - Functions of Public Service Commissions-

1. It shall be the duty of the Union and the State public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

2. It shall also be the duty of the Union Public Service Commission, if requested by any two or more States to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

3. The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted -

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters, affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State.

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Govt. of India or the Government of a State or under

the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State may refer to them.

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union and the Governor as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

4. Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.

5. All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of Legislature of the State may make during the session in which they are so laid."

It is to be noted that under clause (3), the Union Public Service Commission or the State Public Service Commission, has to be consulted by the Government relating to methods of recruitment in civil services and for civil posts, promotions and transfers as well as about suitability of candidates etc. The consultation may also be in regard to disciplinary matters affecting a person serving under the Government. We then find that clause (4) particularly provides that nothing in clause (3) shall require consultation of the Commission in respect to the manner in which any provision referred to in Article 16(4) may be made or the manner in which the effect may be given to the provisions of Article 335. We may peruse clause (4) of Article 16 and Article 335. They read as follows :

"Article 16(4)-Nothing in the article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Article 335.-Claims of Scheduled Castes and Scheduled Tribes to services and posts-The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

Article 16(4) deals with Reservations and Article 335 pertains to consideration of reservation consistent with maintenance of efficiency of the administration. As indicated earlier, clause (4) of Article 320 clearly provides that consultation of the Commission would not be necessary in the matters relating to Articles 16(4) and 335. Therefore, it would be a matter of policy to be decided by the State Government as to what measures, if necessary, may be provided regarding reservations vis-a-vis maintenance of efficiency in services. Where no special qualification or any prescribed standard of efficiency over and above the eligibility criteria is provided by the Rules or the State, it would not be for the Commission to impose any extra qualification/standard supposedly for maintaining minimum efficiency which, it thinks, may be necessary. No consultation with the commission, in such matters, is envisaged in view of Clause (4) of Article 320 of the Constitution.

As observed earlier, for the purpose of shortlisting it would not at all be necessary to provide cut-off marks. Any number of given candidates could be taken out from the top of the list upto the number of the candidates required in order of merit. For example, there may be a situation where more than required number of candidates may obtain marks above the cutoff marks say for example out of 10,000 if 8,000 or 6,000 candidates obtain 45% marks then all of them may have to be called for further tests and interview etc. It would in that event not serve the purpose of shortlisting by this method to obtain the given ratio of candidates, and the vacancy available. For 100 vacancies at the most 500 candidates need be called. If that is so any candidate who is otherwise eligible upto the 500th position whatever be the percentage above or below the fixed percentage would be eligible to be called for further tests. Thus the purpose of shortlisting would be achieved without prescribing any minimum cut-off marks.

In the case in hand, it was not for the Commission to have fixed any cut-off marks in respect of reserved category candidates. The result has evidently been that candidates otherwise qualified for interview stand rejected on the basis of merit say, they do not have the upto the mark merit, as prescribed by the Commission. The selection was by interview of the eligible candidates. It is certainly the responsibility of the Commission to make the selection of efficient people amongst those who are eligible for consideration. The unsuitable candidates could well be rejected in the selection by interview. It is not the question of subservience but there are certain matters of policies, on which the decision is to be taken by the Government. The Commission derives its powers under Article 320 of the Constitution as well as its limits too. Independent and fair working of the Commission is of utmost importance. It is also not supposed to function under any pressure of the government, as submitted on behalf of the appellant Commission. But at the same time it has to conform to the provisions of the law and has also to abide by the rules and regulations on the subject and to take into account the policy decisions which are within the domain of the State Government. It cannot impose its own policy decision in a matter beyond its purview.

The appellant has also placed reliance upon a decision reported in 1997(3) SCC page 90, Dr. Sadhna Devi & Ors. v. State of U.P. & Ors. It, however, deals with an entirely different situation. The matter pertains to the admission to post-graduate course in the medical colleges. An entrance test was prescribed which also prescribed minimum qualifying marks. But so far the candidates belonging to S.C. and Scheduled Tribe candidates the condition of obtaining the minimum qualifying marks was removed by means of a Circular issued by the State Government. The Circular of the State Government was challenged by the other candidates, pleading discrimination. It was found that though regulating the selection procedure was within the competence of the State Government but prescribing eligibility criteria for maintaining proper standards, fell within the competence of Medical Council of India. In that view of the matter, it was held that the State Government had decided to hold entrance examination for selection instead of merit of M.B.B.S. examination and thus having prescribed minimum qualifying marks, it was not open to it to do away with that criteria for reserved category candidates altogether. It was thus found that once a decision was taken to prescribe minimum qualifying marks it could not be said by the State Government that there would be none for the reserved category candidates since it was within the competence of the Medical Council of India to have Prescribed the criteria for maintaining proper standards. Therefore, the stand of the appellant Commission in this case that, it being an independent body, is not subservient to any authority or the State Government, hence it is competent for it to lay down minimum efficiency standards including in the matters which may fall within the purview of Article 335 of the Constitution, is erroneous.

Having considered the matter, we find that no interference is called for in the judgment of the High Court. In the result, all the appeals are dismissed with costs to be borne by the appellant Punjab Public Service Commission.