

ITEM NO.11 Court 10 (Video Conferencing) SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5169/2021

(Arising out of impugned final judgment and order dated 11-12-2020 in CWP No. 15123/2007 passed by the High Court of Punjab & Haryana at Chandigarh)

KAPIL HOODA

Petitioner(s)

VERSUS

HARYANA STAFF SELECTION COMMISSION & ORS.

Respondent(s)

(FOR ADMISSION and IA No.45380/2021-PERMISSION TO APPEAR AND ARGUE IN PERSON)

Date : 02-08-2021 This petition was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
 HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Petitioner-in-person

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Permission to appear and argue in-person is granted.

This Special Leave Petition is against an order dated 11th December 2020 passed by the High Court of Punjab and Haryana at Chandigarh, dismissing the Writ Petition being CWP No.15123 of 2007 filed by the Petitioner.

On or about 7th December 2006, the Respondent No.1 advertised three posts of Deputy Superintendents of Jail. Two of the posts were of the 'General' category and one post was reserved for the

'Scheduled Caste'.

It appears that the eligibility criteria for the post was as follows :-

- (i) Degree in Arts or Science from a recognised university
- (ii) Knowledge of Hindi upto the matriculation standard
- (iii) Minimum height of 5'7" except for Dogras and Gorkhas and minimum chest measurement, 33" unexpanded and 34" expanded
- (iv) Preference to candidates holding Degree or Diploma in Criminology

In response to the advertisement, the Petitioner who was over 6' tall and had the requisite eligibility applied. The Petitioner had obtained the LLB Degree from Punjab University at Chandigarh in 2004 as a regular candidate and had done his Master of Arts in Criminology from Lok Nayak Jai Prakash National Institute of Criminology and Forensic Science under the Ministry of Home Affairs, Government of India, New Delhi. The Petitioner was short-listed and called for physical measurement on 29th March, 2007.

Thereafter, by a letter dated 5th March, 2007, the Petitioner was informed that he had cleared the physical measurement test on 29th March, 2007 and was directed to appear for interview on 30th March, 2007 before the Haryana Staff Selection Commission. The Petitioner duly appeared for the interview.

The Petitioner has stated that when the results were declared, the name of the Petitioner did not appear in the list of selected candidates. On making an enquiry under the Right to Information Act, 2005, the Petitioner was informed that he had secured 40.29

marks whereas the candidates selected for the 'General' category posts had secured 43.90 marks and 43.10 marks respectively. The Petitioner was informed that the total marks for assessment of candidates was 75 out of which 50 marks were allocated for educational qualification and 25 marks for viva voce. The Petitioner filed the writ petition questioning the selection. The main thrust of his argument was that he was entitled to weightage for educational qualification of M.A. in Criminology, which he had not been given.

In response to another query under the Right to Information Act, the Respondent No.1 was provided with the break up of the marks obtained by the respective candidates. Respondent No.2 had been allotted 20.90 marks for his educational qualification and 23.00 for his viva voce and obtained total 43.90 marks out of 75 marks. The other candidate, i.e., Respondent No.3 had secured 23.10 marks for his educational qualification and 20 out of 25 marks in the viva voce examination. His total marks were 43.10 out of 75. The Petitioner was given 26.29 marks for his educational qualification, additional 2 marks for higher qualification, but only 12 marks in the viva voce and he secured 40.29 marks.

In response to another query under the Right to Information Act, the Petitioner was informed that out of 50 marks for academic qualification, 45 marks were for educational qualification at the graduation level and 5 marks were for higher qualification, candidates with Ph.D were given 5 out of 5 marks, M.Phil candidates 3 out of 5 marks and 2 out of 5 marks for post graduation. The

Petitioner got 2 marks out of 5 for holding the Post Graduate Degree in Criminology.

Preference may be given to a candidate with Degree or Diploma in Criminology, when other things are equal and when the candidate's marks are the same as and not lower than others who do not have such Degree or Diploma. This may be a valid criteria of selection when the assessment and allotment of marks is fair and transparent, for example, by conducting a written test or based on the quality of performance, and not when there appears to be arbitrariness in the awarding of marks in an interview.

While it may be true, that in exercise of jurisdiction under Article 226 of the Constitution of India, the Courts do not sit in appeal over decisions taken by a Staff Selection Commission, or embark upon a comparative assessment of different candidates, to determine who is the best, what troubles the conscience of this Court is whether this Court should simply sit back and fold its hands when the selection *prima facie* appears to be arbitrary, with no written test, but only a so called viva voce, without any disclosed intelligible criteria, when candidates called for an interview are awarded marks whimsically and capriciously, based on a policy of pick and choose and a candidate otherwise well qualified is given disproportionately low marks in the interview compared to less qualified candidates who graduated through the correspondence course.

In this case, the purported performance of candidates at the interview tilted the impugned selection in favour of a candidate who was awarded 23.25 out of 25 in the viva voce, even though he secured 20.90 marks for his educational qualifications, acquired as an external candidate through correspondence course. The preponderance of possibilities point towards discrimination.

By a letter dated 28th May, 2008, the Petitioner was informed that the information sought by the Petitioner *vide* his letter dated 6th May, 2006 regarding physical measurement results could not be supplied as the records of physical measurement had been destroyed. The Petitioner claims that the selected candidates did not fulfill the criteria of minimum height of 5'7".

It, *prima facie*, appears that there has been arbitrariness in the selection process. Our conscience does not permit us to shut our eyes to a *prima facie* opaque, unjust, arbitrary and discriminatory selection.

Issue notice, returnable after six weeks.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(MATHEW ABRAHAM)
COURT MASTER(NSH)