

PETITIONER:
NARINDER PAL SHARMA

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 25/11/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 SCC (1) 532 1994 SCALE (5) 136

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. Leave granted.
2. This appeal by special leave arises from the judgment of the Punjab and Haryana High Court in WP No. 10062 of 1993 dated 18-4-1994. The undisputed facts are that as per the procedure under Punjab Civil Services (Executive Branch) (Class 1) Rules, 1976 to fill up nine vacancies in the Punjab Civil Service Executive Branch, nominations have been called from various departments. The rules do not provide the procedure for nomination
+ From the Judgment and Order dated 18-4-1994 of the Punjab & Haryana High Court in C.W.P. No. 10062 of 1993 533
by the heads of departments, Chief Ministers, Ministers, Chief Justice of High Court etc. For the posts of stenographer and the senior clerks working the Secretariat, the Chief Secretary is the head of the department. Since there are more than the required number to be nominated, namely, while three persons out of the senior stenographers and two persons out of clerical cadre, more than 80 candidates have applied for. With a view to screen the candidates, the Chief Secretary had evolved, by administrative order the procedure, namely, for the ACRs he awarded 70 marks categorising that candidates having 'Outstanding' would get six marks, "Very Good" four marks, 'Good' two marks, 'Average' one mark, 'appreciation' one mark, "adverse remarks" one mark minus. Equally, he had also distributed 10 marks experience-wise, i.e. for 10 years' experience four marks, for 10-15 years' experience 6 marks, for 15-20 years' experience 6 marks, and for 20 years' experience he provided 10 marks. In addition, he has also conducted ability test i.e. essay writing in English and Punjabi. He awarded 10 marks in each subject. Thereby, he allotted 20 marks. While determining the ability test candidates who secured more than 33% were recommended and the candidates who secured 33% and less were omitted to be

considered for recommendation. The appellants have challenged the procedure in the High Court. The High Court in the impugned order has upheld the action taken by the Chief Secretary. Thus, this appeal by special leave.

3. It is contended initially that the marks secured in the ability test alone were taken into consideration and those candidates who did not secure 33% and below were excluded and those who secured 33% and above were recommended. Similar tests were not conducted in other departments and that, therefore, the procedure adopted by the Chief Secretary was arbitrary, illegal and unjust denying the right to consideration of the claims of the appellant. So it violates Article 14 of the Constitution. Prima facie, finding the argument to be acceptable, we directed the Chief Secretary to file an affidavit as regards the procedure adopted in recommending the candidates. In the affidavit filed now before this Court, he had explained the aforesaid procedure in awarding the marks. We have a grave doubt about validity of the procedure of nomination basis whether does not violate Articles 14 and 16 of the Constitution, since none has questioned nor argued the point, we need not go into that question. We have seen that out of the five candidates recommended by the Chief Secretary, from the senior stenographers' cadre three candidates were already interviewed by the Public Service Commission and were selected and were accordingly appointed. They had secured higher marks in the order of merit even including the actual marks got in the ability test. The criteria of excluding these candidates who secured 33% and below is not valid in view of awarding separate marks for ACRs and experience. Take the case of senior Assistant H.S. Sodhi. He secured 60 marks for ACRs and 10 marks i.e. total marks for experience, while Nanak Singh and Baldev Ram got only 56 and 54 ACRs and 8 each for experience, yet they were selected. So the criteria adopted is unjust and unfair which violates Articles 14 and 16. So the criteria must be to include for consideration all

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those who secured marks on all heads and to recommend those who secured highest in aggregate since three senior stenographers got total highest marks, their recommendation is valid. Thus we do not find any illegality in recommending 5 candidates to consider three posts out of the quota of the senior stenographers' cadre.

4. So far as Senior Assistants are concerned, we find that the second appellant Harjinder Singh Sodhi is also eligible for recommendation and to be considered by the PSC. He secured 60 marks for his ACRs, 10 marks for experience and 5.5 marks for the ability test. All put together, he secured 75.5 marks while the recommended candidates, namely, Nanak Singh, Senior Assistant had secured only 56 marks for ACRs, 8 marks for experience and 9.5 marks for ability test in total 73.5 marks. Baldev Ram had secured 54 marks for ACRs, 8 marks for experience and 9.9 marks for ability test i.e. in total 71.5 marks. Thereby, Harjinder Singh Sodhi, the second appellant got more marks than the two respondents recommended by the Chief Secretary. Since the first appellant has secured only 56 marks for ACRs, 10 marks for experience and 6 marks for ability test, in total 72 marks, he does not become eligible for recommendation. Under these circumstances, the appeal is allowed and a direction is issued to the Chief Secretary to recommend the case of Harjinder Singh Sodhi for consideration by the PSC towards the quota of the two candidates from the Senior Assistants' cadre. In case the second appellant is found eligible, then

one of the candidates who did not secure higher marks than that of the second appellant awarded by the PSC, has to be excluded. The Chief Secretary is accordingly directed to recommend the name of the 2nd appellant, Harjinder Singh Sodhi within a period of four weeks from the date of the receipt of this order for consideration by the PSC. It is for the PSC to consider and take appropriate decision according to law. He should request the PSC to dispose of the case of the second appellant within a period of four weeks thereafter. The appeal is accordingly allowed and the writ is issued as indicated above. No costs.

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JUDIS