

C.R. No. 1051 of 2001.

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 1051 of 2001.

Date of Decision: 29.1.2006.

Punjab Public Service Commission

...Petitioner.

Versus

Rajiv Kumar Goyal.

...Respondent.

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Sanjeev Sharma, Additional Advocate General, Punjab.
for the petitioner.

Shri Rakesh Garg, Advocate,
for the respondent.

JUDGMENT

The challenge in the present revision petition is to the order passed by the learned trial Court on 24.1.2001, whereby the application filed by the plaintiff for production of record as per provisions of Order 11 Rule 14 CPC, was allowed, to enable the plaintiff to file replication to the written statement of the defendant effectively.

The plaintiff has filed a suit for declaration to the effect that he is duly qualified and selected for the post of Punjab Civil Service (Executive Branch) in the examination and interview for the post conducted by respondent no.3, the result for which was declined on 7.11.1994. The plaintiff has also sought consequential relief of appointment as member of PCS (Executive) along with seniority with effect from 7.11.1994 or with effect from such other date when other selected candidates were appointed.

In the said suit, the defendant filed a written statement, copy

of which has been attached as Annexure P.2 with the present revision petition. Before filing the replication, the plaintiff filed the application for production of record on the ground that the written statement is evasive. In reply to the said application, it was the stand of the Commission that the issues raised by the plaintiff relate to internal working of the Commission and that the internal procedure cannot be divulged publicly in the public interest. It is also pleaded that the maintainability of the Civil Suit is yet to be determined by the Court in as much as the Civil Suit is time barred and the Courts at Patiala have no territorial jurisdiction to entertain the Civil Suit. It has been further pleaded that the Public Service Commission is Constitutional Body as defined under Article 315 of the Constitution of India and the Constitutional obligation can only be determined by a Constitutional Bench. It was also submitted that complete record pertaining to the examination of the candidates has already been submitted before this Court in Civil Writ Petition No. 17490 of 1994 and that the Commission is not in possession of the record pertaining to selection of PCS (Executive) and other like services of the year 1994.

While admitting the present revision petition, this Court on 23.1.2004, passed an order permitting the plaintiff to move an application for inspection of the record. It was ordered that if an application is moved, the plaintiff shall be allowed to inspect the record in the meantime. The petitioner moved an application for recall of the said order. The said application was dismissed on 31.1.2005. Both the orders i.e. the order dated 23.1.2004 and that of 31.1.2005 are subject matter of challenge by the Public Service Commission in Special

Leave to Appeal (Civil) Nos. 8394 and 8396 of 2005, wherein the Hon'ble Supreme Court has issued notice in the Special Leave Petition and passed an order that the operation of the orders of the High Court permitting inspection shall remain stayed.

Earlier the present revision petition came up before me on 30.9.2005, when on an argument raised by the learned counsel for the petitioner, the hearing of the revision petition was deferred till the decision of the SLP. But the matter was listed before this Court on 4.1.2006 when it was pointed by the learned counsel for the plaintiff that SLP is only against an interim order passed by this Court, therefore, hearing of the revision petition need not be deferred. On the said date, it was ordered that it is not a fit case to stay the proceedings sine die. Learned counsel for the petitioner has, however, sought time to argue the matter on merits and to examine the effect of the Right to Information Act, 2005 (hereinafter referred to as 'the Act').

I have heard learned counsel for the parties at some length and I am of the opinion that de-hors of the provisions of Order 11 Rule 14 of the CPC, all citizens have been given right to information in terms of Section 3 of the Act. The information is defined under Section 2(f) of the Act to mean any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Section 4 of the Act contemplates the obligation of public

authorities to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act. Section 6 of the Act provides that a person, who desires to obtain any information under the Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed. Any applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him in terms of Sub Section 2 of Section 6 of the Act.

Therefore, in terms of the provisions of the Act, every citizen of the country has a right to seek information as defined under Section 2(f) of the Act from a public authority. Therefore, without going into the merits of the controversy raised in the suit, the plaintiff is entitled to seek information in terms of the Act.

Learned counsel for the petitioner has, however, raised two fold objections. Firstly, that the plaintiff has moved an application before the Civil Court and not to the Information Officer, appointed under the Act and, therefore, such information cannot be sought by the Civil Court. Secondly, it is pointed out that since the Hon'ble Supreme Court has passed an order in the SLP on 19.4.2005, the Commission is exempted from disclosing any information in terms of Section 8(1)(b) of the Act.

However, I am unable to agree with the argument raised by the learned counsel for the petitioner. It is correct that the application

has been moved by the plaintiff before the Civil Court, but it cannot be said that since the application has not been filed before the Information Officer, the plaintiff would not be entitled to the information. In terms of Section 6 of the Act, an applicant making a request for information is not required to give any reason for requesting the information or the personal details. Therefore, mere fact that an application has been filed before the Civil Court, would not take away the right of the applicant to get information in terms of the Statute. It is the matter of fee, which may be claimed before any such information is supplied. But the information cannot be withheld only for the reason that the application has been filed before the Civil Court and not before the Information Officer.

The argument that the petitioner is exempt to furnish information in terms of the order passed by the Hon'ble Supreme Court, is again not tenable. The order dated 19.4.2005 passed by the Hon'ble Supreme Court reads as under:-

“Taken on board.

Issue notice in the special leave petitions as also on the prayer for grant of interim relief.

Until further orders, it is directed that the operation of the orders of the High Court permitting inspection shall remain stayed.”

The orders passed by this Court on 23.1.2004 and 31.1.2005, which are the subject matter of challenge before the Hon'ble Supreme Court, read as under:-

“Admitted.

To be heard within six months.

The respondent may move an application

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for inspection of the record. If an application is moved, then the respondent shall be allowed to inspect the record in the meantime.

January 23, 2004

Sd/- (Ashutosh Mohunta)
Judge ”

“The C.M. is frivolous.
Dismissed.

31.1.2005.

Sd/- (Ashutosh Mohunta)
Judge ”

A perusal of of the order passed by the Hon'ble Supreme Court would show that the Hon'ble Supreme Court has stayed operation of the aforesaid orders of this Court permitting inspection but there is no order of the Hon'ble Supreme Court which prohibits the Commission to furnish information under the Act. Consequently, there is no exemption available to the petitioner in terms of Section 8(1)(b) of the Act.

In view of the above, I do not find any merit in the revision petition. Hence, the present revision petition is dismissed.

However, it is directed that the information sought by the plaintiff vide Annexure P.4, except documents at Serial No. 8 thereof, be supplied to the plaintiff in terms of the provisions of the Act on soliciting the necessary fee in terms of the Act. The amount of fee shall be communicated to the plaintiff within one month from today.

29.3.2006
ds

(Hemant Gupta)
Judge