

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.12392 of 2011
Date of Decision: May 11th, 2015

Pankaj Sharma & another

...Petitioners

Versus

Secretary Staff Selection Commission, Panchkula & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Shyam Singh Chhokkar, Advocate,
for the petitioners.

Mr.Keshav Gupta, AAG, Haryana,
for the State.

Mr.Y.P.Malik, Advocate,
for respondent Nos.15 and 52.

Mr.Anurag Goyal, advocate,
Mr.Lalit Rishi, Advocate &
Mr.Vishal Malik, Advocate,
for respondent Nos.4 to 6, 9 to 14, 16 to 18, 20, 22 to 28, 31 to
44 and 46 to 51.

Mr.Rohtash Birtt, Advocate,
for Mr.S.S.Dinarpur, Advocate,
for respondent No.53.

Mr.S.S.Mor, Advocate,
for respondent Nos.54 to 56.

AMIT RAWAL, J.

The petitioners have invoked the extra-ordinary writ
jurisdiction of this Court by seeking quashing of the selection and

appointment of respondent Nos.4 to 55, who have been appointed as Ayurveda Dispensers in pursuance to Advertisement No.1/2009, Category No.7, published on 8.9.2010.

Mr. Shyam Singh Chhokkar, learned counsel appearing for the petitioners submitted that respondent Nos. 1 and 2 advertised 71 posts of Ayurveda Dispenser in various Newspapers and the petitioners, in pursuance to the advertisement, also applied and were issued roll number slips to appear in the interview. Petitioner No.1 was issued Roll No.000228 and petitioner No.2 was issued Roll No.000086. On 28.5.2009, the petitioners appeared in the interview along with the original testimonials and on 9.9.2010, i.e., after a gap of 15-16 months from the date of interview, the result of Ayurveda Dispensers was declared and published in the Newspaper vide Annexure P-5. However, the names of the petitioners were not mentioned in the result and accordingly the petitioners sought the information under the Right to Information Act, 2005 from the Secretary, Haryana Staff Selection Commission, Chandigarh regarding the details of the selected candidates, complete qualification of selected candidates and marks obtained by them, marks given in qualification as well as in interview, criteria of qualification and marks given for experience to the selected candidates on 17.9.2010 (Annexure P-6) and on 28.3.2011, vide Annexure P-7, Haryana Staff Selection Commission supplied some information to the petitioners. Since complete information was not provided, petitioner No.1 was compelled to again send an application on 23.4.2011 (Annexure P-10) to supply the recruitment rules of selection of Ayurveda Dispensers. In respect of the rules, copy of the recruitment rules has been annexed as Annexure P-11 and it has been submitted that the

petitioners, on the basis of the following criteria, had got total marks 75, out of which 50 were kept for academic and 25 for interview:-

Petitioner No.1

Academic qualification:	32.63%
Interview	14 marks
Total	46.63%

Petitioner No.2

Academic qualification:	31.4%
Interview	14 marks
Total	45.4%

Learned counsel appearing for the petitioners further submitted that the entire selection process is vitiated in law and the same is an outcome of act of favouritism, unbridled and colourful exercise of powers and is liable to be set-aside on the following points:-

- a) Three candidates bearing Roll Nos.000100, 000104 and 000158 were not having the diploma, which was the essential qualification for Ayurveda Dispenser, but were having BAMS degree;
- b) The academic qualification of the petitioners was higher and the respondents acted in a most biased and partial manner in giving higher marks in the interview to the selected candidates;
- c) No criteria was disclosed in the advertisement. It was

only lateron, i.e., after the interview the same was disclosed;

d) Out of 71 posts, only 52 candidates have joined, 11 had been expelled as they were having a diploma which was not recognized by the State of Haryana and 8 did not join and, thus, 11 posts are lying vacant;

Mr.Keshav Gupta, learned Assistant Advocate General, Haryana appearing for the State, Y.P.Malik Advocate, Mr.Anurag Goyal Advocate, Mr.Rohtash Birtt Advocate for Mr.S.S.Dinarpur Advocate and Mr.S.S.Mor Advocate appearing for the private respondents submitted that the writ petition is liable to be dismissed on the following grounds:-

i) The writ petitioners, after noticing the contents of the advertisement, participated in the selection process, much less, appeared in the interview and waited for the result and in case there was any grievance qua non-non-disclosure of the criteria, they should have challenged the same much earlier;

ii) There was a lot of gap in between the advertisement, interview and as well as the declaration of the result. During the aforementioned period, in case the petitioners had any grievance, they could have knocked the door of this court;

iii) The petitioners waited for the result and since the result was not in their favour, they chosen to challenge the selection of the selected candidates;

iv) The petitioners even did not secure the marks, which

could bring them in the zone of waiting list. The candidate, who had obtained 50.6% marks, was kept in the waiting list and the waiting list was only valid for a period of one year;

v) All the selected candidates are having marks more than 51% and more;

vi) The present case does not fall within the realm of the judicial review as the petitioners have acquiesced by participating in the process of selection and they had two occasions to challenge the same, firstly, when they submitted the applications and secondly, when they appeared in the interview;

vii) There is no challenge to the constitution of the committee. The Court cannot sit as an expert and go behind the mind of the experts, who had interviewed the candidates and awarded the marks as per their performance.

Mr. Anurag Goyal, learned counsel appearing for the private respondents, cited **Madan Lal and others Versus State of Jammu & Kashmir**, 1995(2) S.C.T. 880 (para 10) to contend that the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. He then cited **Anzar Ahmad Versus State of Bihar and others**, 1994(1) S.C.T. 484, wherein the viva voce test had been accepted and recognized in judging the suitability of the candidate for appointment on various posts as the method had been universally followed

in the selection. Since in this case, the selection had been done on the basis of the academic qualification and interview and there was no written test, therefore, awarding of 50 marks for academic qualification and 25 marks for interview was fair and justified. Mr. Anurag Goyal then cited **Shashindra Singh (Km.) Versus Union of India and others, 2010(3) RSJ 682** to contend that the petitioners are estopped from challenging the criteria of allocation of 50 marks for the academic and 25 marks for the interview as it is only in the case of written test that undue weightage given to the marks and after participation, the petitioners cannot be permitted to challenge the selection of others.

Mr. S.S. Mor, learned counsel appearing for respondent Nos. 54, 55 and 56 submitted that the aforementioned respondents had a BAMS degree in their favour, whereas the minimum qualification prescribed for selection and appointment of Ayurveda Dispenser was diploma in Ayurveda and, therefore, the aforementioned respondents were having higher qualification and they could not be deprived of zone of consideration and, thus, have rightly been selected and in support of aforementioned contention, relied upon the judgments rendered in **State of Haryana and Anr. Versus Abdul Gaffar Khan & Anr., 2006(11) SCC 153** and **Jyoti K.K. & Ors. Versus Kerala Public Service Commission & Ors., 2002 (Sup1) JT 85**.

Learned counsel appearing for the petitioners, in rebuttal, submitted that the advertisement is completely silent inasmuch as nothing has been mentioned that the person having higher qualification shall also be entitled to apply. In other words, there is no mention of person having equal qualification and participation in the selection process.

I have heard the learned counsel for the parties and appraised the paper book and the case law.

The arguments canvassed by the learned counsel for the respondents, duly supported by the aforementioned case law, is not only attractive but based on several principles.

It is a matter of record that the petitioners have participated in the selection process and there was a lot of gap in between the submission of applications, date of interview and declaration of the result. In case the petitioners had any grievance qua non-disclosure of the criteria in the advertisement, they could have challenged the advertisement on the ground available to them. Since the petitioners have participated in the entire selection process, therefore, they are estopped from challenging the same. In this regard, I drawn support from the judgment of Division Bench of this Court rendered in Shashindra Singh's case (supra). It is a settled proposition of law as has been held in Madan Lal's case (supra), that the Court cannot sit as a Court of appeal and try to reassess the relative merits of the concerned candidates, who had been assessed at oral interview nor can the petitioners successfully urge before this Court that they were given less marks, though their performance was better. It is only for the Interview Committee to judge the relative merits of the candidates, who were orally interviewed. Therefore, the assessment of marks made by the expert committee cannot be brought under challenge only on the ground that the assessment was not proper and justified as that would be the function of the appellate body and certainly this Court can not act as a Court of appeal over the assessment made by such an expert committee.

In the instant case, there is no challenge to the constitution of

the selection committee and, therefore, the petitioners are not permitted to even plead qua awarding of lesser or higher marks in the interview. It is always in the domain of the selection committee to assess the intelligence and general knowledge of the respective candidates. The fixing of the criteria by getting 50 marks for academic qualification and 25 marks for the interview has been upheld by the Hon'ble Supreme Court in Anzar Ahmad's case (supra). Admittedly, respondent Nos.54, 55 and 56 are/ were having BAMS degree, which is higher than the diploma and, therefore, the said respondents having BAMS degree cannot be termed to be not possessing necessary qualification as nothing has been mentioned in the advertisement that the degree holders shall not be eligible to apply for such post. De hors of the fact that all the seats have not been filled, but the fact remains that the petitioners have only a right of consideration and not right of selection. Since the petitioners have not obtained the minimum required marks and even their names did not figure in the waiting list, they cannot be considered for selection at this belated stage.

In view of what has been observed above, the writ petition stands dismissed.

May 12th, 2015
ramesh

(AMIT RAWAL)
JUDGE