

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.19993 of 2009

Date of Decision: 27.07.2015

Kashmir Chand Kamboj

...Petitioner

Versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL.

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

Present: Mr. Girish Agnihotri, Sr. Advocate with
Mr. Ishan Bhardwaj, Advocate &
Mr. Bhuwan Vats, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana.

Mr. Ashok Goel, Advocate
for the respondent Nos.4 and 5.

AMIT RAWAL, J. (ORAL)

The petitioner has approached this Court for issuance of directions to the respondents to only treat such candidates eligible who fulfill the minimum qualifying marks in the written test (i.e. 50% marks for General Category and 45% marks for the Scheduled Caste and Backward Class categories) and for quashing of the result dated 22.07.2009 (Annexure P-11) and order dated 08.09.2009 (Annexure P-3) passed by the respondent No.3.

It has been submitted that the petitioner in compliance of the

order dated 29.07.2009 passed in CWP No.11242 of 2009 submitted a representation dated 30.07.2009 before the respondents for kind consideration and the same has been dismissed vide impugned order dated 08.09.2009 (Annexure P-3) and the reasoning assigned therein was that on the basis of the test, Commission published a public notice dated 24.01.2009 (Annexure P-7) for conducting the written test for the post of Assistant Engineer (Civil) and on the basis of said test, the requisite number of three times candidates of the advertised posts in the respective category as per notice were not available and in pursuance to the Commission Resolution dated 23.02.2009, the Commission called three times candidates of the advertised posts in order of merit, by relaxing the percentage of marks.

Mr. Girish Agnihotri, learned Senior Advocate submits that petitioner in pursuance to the advertisement issued on 07.08.2008 (Annexure P-4) applied for appointment as Assistant Engineer (Civil) under reserved category i.e. SC/BC Category. Thereafter respondent No.3 issued a public notice dated 24.01.2009 indicating that written test would be held on 22.02.2009. The contents of Annexure P-7 are reproduced hereinbelow as under:-

"HARYANA STAFF SELECTION COMMISSION, BAYS

NO.67-70, SECTOR-2, PANCHKULA-134151

PUBLIC NOTICE

Notice to the candidates for the posts of Assistant Engineer (Civil) Public Works (B&R) Department, Haryana.

Reference Advt. No.6/2008, Catg. No.6 dated 7.8.2008 published in the various newspapers for the post of Assistant Engineer (Civil), Public Works (B&R) Department, Haryana.

It is for the information of all eligible candidates that the Haryana Staff Selection Commission will hold a written examination for the post of Assistant Engineer (Civil), Public Works (B&R) Department, Haryana on 22.02.2009 (Sunday) from 10.30 a.m. to 12.15 p.m. at Panchkula. The written examination for the above post will be of graudation standard in Civil Engineering. General Knowledge, General Studies and Hindi/Sanskrit upto Matric Standard comprising 200 objective type multiple choice question. Each question will carry two marks. Duration of the examination will be of 1 hour and 45 minutes. The paper will be in two parts as under:-

<i>Part-A (120 questions)</i>	<i>Degree in Civil Engineering.</i>
<i>Part-B (80 questions)</i>	<i>General Knowledge/General Studies, Hindi/Sanskrit.</i>

The candidates will have to secure the minimum qualifying marks in the written examination as mentioned below:-

- | | |
|---|---|
| <i>i) General category candidates</i> | <i>50%</i> |
| <i>ii) SC & BC category candidates</i> | <i>45%</i> |
| <i>iii) ESM & PHC category candidates</i> | <i>40%</i> |
| <i>iv) DESM & PHC category candidates</i> | <i>As for General, SC, BC, candidates as the case may be.</i> |

Viva-voce test will be of 50 marks.

However, as per law laid down by the Hon'ble Apex Court, candidates equal to three times of the number of vacancies will be called for interview based on their performance in the writen test. The total marks obtained in the written test and viva-voce will determine the merit of the candidates in their respective categories. Roll number to the eligible candidates are being sent separately to the aforesaid examination and in case any candidate does not receive the roll number by 16.2.2009, he/she may contact the Commission's office on 17.2.2009 during office hours

for receipt of duplicate roll number. He/she should come alongwith original documents in support of his/her qualification, photo, proof of having deposited the requisite fee and receipt of registry. After the aforesaid date, no request for issue of duplicate roll number will entertained. The Commission will not be responsible for the postal delay, if any.

USE OF MOBILE PHONE, PAGER AND OTHER ELECTRONIC DEVICE IN HARYANA STAFF SELECTION COMMISSION EXAMINATION IS STRICTLY PROHIBITED, IF ANY MOBILE PHONE OR ANY ELECTRONIC DEVICE CAUGHT IN THE EXAMINATION HALL, IN ADDITION TO CANCELLATION OF CANDIDATURE WOULD ALSO LEAD TO FILING A CRIMINAL CASE AND DEBARRING; FROM FURTHER EXAMINATIONS OF HSSC UPTO ONE YEAR.

	<i>Secretary</i>
<i>Place:Panchkula</i>	<i>Haryana Staff Selection Commission</i>
<i>Dated: 24.1.2009</i>	<i>Panchkula "</i>

He further submits that in the aforementioned public notice, the minimum qualifying marks of written test, as regards the SC/BC category, were 45% for the purpose of qualifying the test i.e. minimum 180 as the maximum numbers in the written examination were kept as 400, as two marks each were assigned to 200 objective types multiple choice question. The test, as per Schedule, was held on 22.02.2009, however, it has been stated that in pursuance to the resolution dated 23.02.2009 promulgated by the Commission i.e. Haryana Staff Selection Commission requisite number of three times candidates were not available in the respective categories and the Commission called three times candidates of the advertised posts in order of merit by relaxing the percentage of marks and accordingly the

result dated 24.02.2009 (Annexure P-9) was declared, whereby the petitioner was also shown in the list of selected candidates for the purpose of interview.

It is further submitted that as per the information obtained under the RTI Act vide letter dated 08.08.2009, it has been found that private respondent Nos.4 and 5 have been given 156 and 160 marks i.e. less than the minimum eligible marks as prescribed in the notice Annexure P-7 and thus respondents after the written test had reduced the criterion from 45% and the respondent No.6-Mahesh Kumar who secured 156 marks in the written test has not joined, though all the three private respondents as per the information (Annexure P-16) obtained 37, 33 and 37 marks in the interview whereas petitioner only obtained 12 marks. Thus, in total all the private respondents have obtained 193 marks, whereas petitioner obtained 192 marks.

He further submits that said criterion after the written test cannot be changed though it could have been before the examination & in this regard relied upon judgment of Hon'ble Supreme Court in *Tamil Nadu Computer Science B.ed Graduate Teachers Welfare Society(I) Vs. Higher Secondary School Computer Teachers Association and ors.. 2009(14) SCC 517*, to contend that in similar circumstances, the Hon'ble Supreme Court had an occasion to ponder the same facts and held that the guidelines of the recruitment as laid down through policy decision totally were/are sacrosanct and required to be adhered to/followed for all practical purposes. He submit that in the aforementioned case, the Government therein had reduced the qualifying marks from 50% to 35%, which did not weigh by the Hon'ble Supreme Court and struck down the selection of the candidates who secured

less than the minimum 50% marks.

Mr. Hitesh Pandit, Addl. A.G. Haryana and Mr. Ashok Goel, Advocate for the respondent Nos.4 & 5 submits that present writ petition is not maintainable as the petitioner is challenging the final result and has already participated and remained unsuccessful and, therefore cannot be permitted to agitate the same.

He further submits that since number of suitable candidates were not found eligible therefore merit list of three times of the candidates was prepared and, on this count, the respondents reduced minimum percentage marks from 45% and, therefore the candidates who have secured 156 marks in the written test were also considered for the purpose of interview and thus, the criterion has rightly been changed and this fact has also been upheld by this Court in CWP No.15885 of 2000 titled as Jawahar Lal Goyal etc. Vs. Vs. State of Haryana etc. decided on 23.05.2001 and order dated 06.12.2001 passed in Review Application bearing No.211 of 2001. He further submitted that Commission has power to fix the criterion.

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

There is no denial to the fact that the resolution dated 23.02.2009 issued by the Haryana Staff Selection Commission came to be promulgated after a written test was held on 22.02.2009 and before that Commission had caused a public notice dated 24.01.2009, whereby before conducting written test, fixed the eligibility criterion and as per the same, the candidates who had applied under SC/BC category were to require 45% of minimum qualifying marks. In essence the person would be eligible for interview in case he/she had secured minimum 180 marks. It is conceded

position on record that minimum qualifying marks were reduced in spirit of resolution dated 23.02.2009 and on the basis of the same, respondent/State issued the merit list by reducing the minimum qualifying criterion.

It is also a matter of record that respondent No.6-Mahesh Kumar has not joined on 06.05.2009 as this fact is not disputed by the State thus, since, one post of Assistant Engineer (Civil) is lying vacant. While juxtaposing, the eligibility criterion (Annexure P-7) and as well as ratio descendi culled out in Tamil Nadu's case (supra), it leaves no manner of doubt that once the eligibility criterion before the written test had been circulated, then Commission cannot change the criterion before the interview, for, it may entail the element of biasness and favouritism. Apparently, the said action of the State does not appear to be justified, logic but the fact remains that respondent Nos.4 and 5 in pursuance to the selection have joined and have rendered almost more than five years of service, therefore, I do not deem it appropriate to set aside the said selection process. Since one post of Assistant Engineer (Civil) is lying vacant particularly the fact the petitioner had obtained more minimum qualifying marks than the private respondents, the petitioner is entitled to be appointed for the post of Assistant Engineer (Civil) under the SC/BC category.

For the sake of repetition, the respondent Nos.4 and 5 though had secured less marks than the minimum qualifying marks they have taken into consideration owing to the resolution dated 23.02.2009 by the Commission.

In view of what has been observed above, writ petition is allowed.

The respondent-State is directed to appoint the petitioner on the

post of Assistant Engineer (Civil) in the Department of PWD, B&R, Haryana as expeditiously as possible within a period of one month from the date of receipt of certified copy of this order.

It is made clear that petitioner shall also be entitled to all the consequential benefits in accordance with law.

Writ petition stands allowed.

July 27, 2015
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(AMIT RAWAL)
JUDGE