

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 16816 and 2011 (O&M)
and C. W. P.No. 17414 of 2011

Reserved On : 27.04.2015

Pronounced On : 01.05.2015

Ms. Sumita Vig Petitioner

vs.

Panjab University, Chandigarh and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Gagandeep Goel, Advocate
for the petitioner in C. W. P. No. 16816 of 2011.

Mr. Pardeep Solath, Advocate
for the petitioner in C. W. P. No. 17414 of 2011.

Mr. Karan Singh Sandhu, Advocate
for the respondents.

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DEEPAK SIBAL, J. :

C. M. No. 5276 of 2015 :

No ground to recall the order dated 20.04.2015 is made out.

Dismissed.

C. M. No. 5293 of 2015 :

Through this application, additional documents Annexures P-21 to P-24 are sought to be placed on record.

Allowed as prayed for. CM stands disposed of.

C. M. No. 5400 of 2015 :

Through this application, written arguments on behalf of the petitioner are sought to be placed on record.

Allowed as prayed for. CM stands disposed of.

Main Case :

These two petitions being **C. W. P. No. 16816 of 2011** and **C. W. P. No. 17414 of 2011**, involving similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment.

Through advertisement no. 11/2010, the respondent - Panjab University, Chandigarh (hereinafter referred to as – the University) sought applications for appointment to various posts, including six posts of Assistant Professors in the Institute of Educational Technology and Vocational Education (IETVE). Out of these six posts, one post was reserved for a member of Scheduled Caste category and the remaining five posts were to be filled up from the General Category. The petitioners applied for consideration of their candidature against the above said advertised posts. The selection was only on the basis of an interview, but

when the petitioners, in spite of being fully eligible, were not called for interview, they approached this Court through the present writ petitions seeking issuance of directions to the respondent University to consider their candidature for appointment to the above said posts, after interviewing them.

I have heard counsel for the parties and with their able assistance, have also gone through the entire record of both the writ petitions.

It is the admitted position that there were five posts of Assistant Professors in IETVE, which were advertised to be filled up from the General Category i.e. the Category, to which both the petitioners belong. It is further the admitted position that the selections were to be made solely on the basis of interview. It is still further the undisputed position that the total number of applicants who were eligible for consideration of their candidature for the above said five posts (including both the petitioners), were 167 i.e. over 35 times the number of posts to be filled up. Thus, there was a huge disparity between the number of posts advertised viz-a-viz the number of eligible candidates. That being so, the respondent University decided to limit the number of candidates to be called for interview, while relying on the decision of the Syndicate of the respondent University dated 25.05.2002, which is reproduced below :-

“1. Number of candidate to be

called for interview be as under :

1. PROFESSORS

For the posts of Professors, all eligible candidates be called for interview.

2. READERS AND LECTURERS

The number of eligible candidates to be called for interview for the posts of Lecturers and Readers be upto 15 for one post and 5 for each additional post besides all eligible SC/ST candidates.”

From the above reproduced decision, it is clear that so far as the General Category is concerned, the number of eligible persons to be called for interview, for the posts of Lecturers (now Assistant Professors) and Readers, is up to 15 for the first post and five for each additional post. Thus, for five posts, 35 candidates were required to be called for interview. Now, the question before the respondent University was so as to which of the 35 candidates were to be called for interview. The Screening Committee, which comprises of Senior Academicians, discussed the matter with the Vice Chancellor of the respondent University and on the basis thereof, framed the following criteria for short-listing the number of candidates for being called for interview :-

“(II) CRITERIA FOR GENERAL CATEGORY CANDIDATES

Category – 1

First class in both M.Ed & Master's degree in teaching subject/foundation courses with Ph.D and two research publication in refereed journals/Articles/books.

Category – 2

First class in M.Ed & 55% marks in Master's degree in teaching subject/foundation courses with Ph.D and two research publications in refereed journals/Articles/books.

Category – 3

55% and above marks in both M.Ed & Master's degree in teaching subject/foundation courses with Ph.D and two research publication in refereed journals/Articles/books.

Category – 4

First class in both M.Ed & Master's degree in teaching subject/foundation courses with Ph.D in Education.

Category – 5

First class in M.Ed & 55% marks in Master's degree in teaching subject/foundation courses

with Ph.D in Education.

Category – 6

55% and above marks in both M.Ed & Master's degree in teaching subject/foundation courses with Ph.D in Education.

Category – 7

First class in both M.Ed & Master's degree in teaching subject/foundation courses and two research publications in refereed journals/Articles/books.

Category – 8

First class in M.Ed & 55% marks in Master's degree in teaching subject/foundation courses and two research publications in refereed journals/Articles/books.

Category – 9

55% and above marks in both M.Ed & Master's degree in teaching subject/foundation courses and two research publications in refereed journals/Articles/books.

Category – 10

All eligible candidates, as per the advertised

qualifications prescribed for the posts.

Note :- *In such cases where the number of eligible candidates having equal qualifications in one category exceeds the number of candidates required to be called for interview, in such cases %age of marks at M.Ed's level may be considered and in case of tie, %age of marks at Master's level will be taken into account.”*

A perusal of the above quoted criteria shows that candidates with First Class in both M.Ed and Master's degree in teaching subject/foundation courses with Ph.D and two research publications in refereed journals/Articles/books have been categorized under Category-1 and were thus to be giving preference over the others. If after applying Category-1, the number of candidates to be called for interview was not met then candidates falling in Category-2 were to be considered and so on. The categorization is solely based on academic excellence and achievements of the applicants. The above categorization, in order to reach the desired number of short-listed candidates, which is based on academic achievement

and excellence, according to me, is reasonable and fair. Even otherwise, the same has been crafted by Academicians/Experts in their fields and thus cannot be rightly interfered with.

Wherever selections are to be only on the basis of interview and there are a large number of eligible candidates viz-a-viz the number of available posts, the selection Board can adopt any rational procedure to short-list the number of candidates, who should be called for interview. To carry out a satisfactory interview, it is indeed better to short-list the candidates on the basis of a justifiable criteria. When lesser number of candidates are interviewed each day, the interviewing Board is also able to concentrate more on each candidate and can properly assess and evaluate them.

Further, in the advertisement in question, it was specifically projected by the respondent University that it would not be obligatory on its part to call for interview every candidate who possesses the essential qualifications. Clause 9 of the advertisement is reproduced below for ready reference :-

“9. *It is not obligatory on the part of the University to call for interview every candidate who possesses the essential qualifications.”*

The above clause of the advertisement, containing the terms of

selection, binds both – the petitioners as also the respondent University, especially when the petitioners, being well aware of the above term, have not challenged the same. The above clause was very much there in the advertisement, in pursuance to which the petitioners had applied, without raising any objection whatsoever. They were thus made aware and put to notice that even if they were eligible, through the process of short-listing, they may not be called for interview. After having applied in pursuance to the above term, without any protest, the petitioners now are clearly estopped from filing the present writ petition, for the reliefs claimed for.

Permitting short-listing of candidates on the basis of a justifiable criteria, the Apex Court in the case of **M. P. Public Service Commission vs. Navnit Kumar Potdar and another** reported as **1994 (6) SCC 293**, has held as under :-

“5. The question which is to be answered is as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts,

certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where

selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.

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7. *The sole purpose of holding interview is to search and select the best among the applicants. It is obvious that it would be impossible to carry out a satisfactory viva voce test if large number of candidates are interviewed each day till all the applicants who had been found to be eligible on basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial because of the time constraint. The members of the Commission shall not be in a position to assess properly the*

candidates who appear before them for interview. It appears that Union Public Service Commission has also fixed a ratio for calling the candidates for interview with reference to number of available vacancies.

8. *In Kothari Committee's Report on the "Recruitment Policy and Selection Methods for the Civil Services Examination" it has also been pointed out in respect of interview where a written test is also held as follows:*

"The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled"

In this background, it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are called for interview are properly assessed and

evaluated. It need not be pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short-listing is part of the process of selection. Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences, If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of

practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. This process will not be in conflict with the requirement of Section 8(3)(c) which prescribes the eligibility for making an application for the post in question. In a sense Section 8(3)(c) places a bar that no person having less than five years of practice as an advocate or a pleader shall be entitled to be considered for appointment to the post of Presiding Officer of the Labour Court. But if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in conflict with the requirement of Section 8(3)(c) of the Act.”

The above judgment was followed by the Apex Court in

B. Ramakichenin @ Balagandhi vs. Union of India and others -

Appeal (Civil) No. 5274 of 2007, decided on 16.11.2007, wherein it has

been held as under :-

“15. It is well settled that the method of short-listing can be validly adopted by the Selection Body vide Madhya Pradesh Public Service Commission vs. Navnit Kumar Potdar and another - 1994(6) SCC 293 (vide paras 6, 8, 9 and 13), Government of Andhra Pradesh vs. P. Dilip Kumar and another - 1993(2) SCC 310, etc.

16. Even if there is no rule providing for short-listing nor any mention of it in the advertisement calling for applications for the post, the Selection Body can resort to a short-listing procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of short- listing can

be resorted to by the Selection Body, even though there is no mention of short-listing in the rules or in the advertisement.

17. However, for valid short-listing there have to be two requirements :

(i) It has to be on some rational and objective basis. For instance, if selection has to be done on some post for which the minimum essential requirement is a B.Sc. degree, and if there are a large number of eligible applicants, the Selection Body can resort to short-listing by prescribing certain minimum marks in B.Sc. and only those who have got such marks may be called for the interview. This can be done even if the rule or advertisement does not mention only those who have the aforementioned minimum marks, will be considered or appointed on the post. Thus the procedure of short-listing is only a practical via-media which has been followed by the courts in various decisions since otherwise there may be great difficulties for the

selecting and appointing authorities as they may not be able to interview hundreds and thousands of eligible candidates;

(ii) If a prescribed method of short-listing has been mentioned in the rule or advertisement then that method alone has to be followed.”

To the same effect is another recent judgment of Apex Court in

Yogesh Yadav vs. Union of India and others - Civil Appeal No. 6799

of 2013, decided on 16.08.2013, wherein it has been held as under :-

“17. It is stated at the cost of repetition that there is no change in the criteria of selection which remained of 80 marks for written test and 20 marks for interview without any subsequent introduction of minimum cut off marks in the interview. It is the short listing which is done by fixing the benchmark, to recruit best candidates on rational and reasonable basis. That is clearly permissible under the law. (M.P. Public Service Commission vs. Navnit Kumar Potdar & Anr. (1994) 6 SCC

293).”

As per the above quoted judgments of the Apex Court, short-listing of candidates is permissible on the basis of justifiable and reasonable criteria. The criteria of short-listing, as reproduced above, is purely based on the academic achievements of all the eligible candidates. Out of the eligible candidates, persons with higher academic qualifications and higher score in such qualifications have been given preference. Illustratively, a candidate possessing First class in both M.Ed and Master's degree with Ph.D has been put in Category-1, whereas candidate with First class in M.Ed and 55% marks in Master's degree with Ph.D has been placed in Category-2 and so on. The criteria, having been based on academic achievements and the preference having been given to candidates, who have acquired higher qualifications with higher academic score, is a criteria, which I find to be justifiable and reasonable.

It is not the case of the petitioners that the above said criteria has not been applied by the respondent University to one and all.

It may further be noticed that neither the criteria for short-listing candidates, as adopted by the respondent University, nor Clause 9 of the advertisement, as reproduced earlier, has been challenged by the petitioners.

Counsel for the petitioners have argued that the eligible persons like the petitioners could not have been made ineligible as they

have not been called for interview. It is submitted that the petitioners, being eligible, were required to be called for interview and then adjudged on the basis of their merit during the interview. This contention, raised by counsel for the petitioners, is to be considered only to be rejected, for the reason that the petitioners have not been declared ineligible. In view of large number of eligible candidates viz-a-viz posts available, the respondent University merely decided to short-list the candidates on the basis of justifiable and reasonable criteria, which, as per the law settled by the Apex Court, referred to above, could be done.

In view of the above, finding no merit, both the writ petitions, being **C. W. P. No. 16816 of 2011** and **C. W. P. No. 17414 of 2011**, are ordered to be dismissed with no order as to costs.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 01.05.2015
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