

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-12305-2013

Date of Decision: 07.07.2015

Dr. Sudarshan Deep Kaur

...Petitioner

Versus

Haryana Public Service Commission 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. Sudhir Mittal, Advocate for the petitioner.

Mr. H.N. Mehtani, Advocate for the respondent No.1.

Mr. R.N. Sharma, Advocate for respondent Nos.2 and 3.

Mr. Anurag Goyal, Advocate &
Mr. Lalit Rishi, Advocate for the respondent No.5.

Mr. Rajneesh Chadwal, DAG, Haryana for respondent No.6.

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AMIT RAWAL, J. (ORAL)

Challenge in the present petition is to the selection of the private respondent to the post of Lecturer, Geography in College Cadre.

Mr. Sudhir Mittal, learned counsel appearing on behalf of the petitioner submits that in pursuance to the advertisement No.7 issued on 28.10.2009 (Annexure P-10) for filling up 475 temporary post of Lecturers (College Cadre) HES-II, (Group-B) in various subjects, which included 33

posts in the subject of Geography petitioner, belonging to the backward classes, applied for the same, as four posts were reserved for backward classes.

He has drawn the attention of this Court to the advertisement, wherein essential qualification for submission of the application has been described, which reads thus as:-

"4. Essential Qualifications:

(I) Lecturers (all subjects except Mass Communication)

(a) Good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with letter grades O, A, B, C, D, E and F at the Master's degree level in the relevant subject from an Indian University or an equivalent degree from a foreign university.

(b) Knowledge of Hindi/Sanskrit upto Matric standard.

c) Besides fulfilling the above qualifications, candidates should have cleared the National Eligibility Test (NET) for Lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

Xxx xxx xxx xxx

Note: I

a) NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturer in colleges.

Provided that the candidates who have acquired Ph.D Degree upto 31st May, 2009 are exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment to the posts of Lecturers of equivalent positions in college provided further that those candidates who were enrolled for Ph.D. Degree upto 31 May, 2009 shall also become eligible for exemption from the requirement of the minimum eligibility conditions of NET/SLET for recruitment and appointment to the posts of Lecturers or equivalent position in colleges only on

acquisition of Ph.D. Degree."

He submitted that petitioner has secured 56% in M.Sc. Geography and had also done Ph.D before 31.05.2009 and had also experience of three years. He submitted that date of interview for the said post was 24.08.2011 and before the date of interview, the Government had issued clarification on 26.07.2011 (Annexure P-13), wherein it was clarified that candidates who were enrolled for Ph.D Degree or on before 31.05.2009 ("Regulation issued Promulgated by UGC") shall be considered eligible for recruitment to the post of Lecturers (College Cadre) or who acquired Ph.D. Degree up to the said date of interview in the particular subject, the said change in criteria is thus not permissible and therefore is illegal.

Learned counsel for the petitioner in support of the aforementioned contention, has relied upon judgment of Hon'ble Supreme Court of India in *Rekha Chaturvedi (Smt.) Vs. University of Rajasthan and others, 1993 Supp (3) SCC 168*, to contend that relevant date for adjudging the qualification would be date specified in the advertisement/notification or date of scrutiny of qualification will be the last date for filing the application and not the date of selection.

He has drawn the attention of this Court to Annexure P-19, the information received under the RTI Act, whereby the total marks for viva-voce examination was 100, 40 marks for personal achievement which was further bifurcated into various heads and 60 marks for the interview. The relevant piece of information provided to the petitioner read thus:-

"Total marks of the Viva-voce examination:- 100 marks

1. Personal Achievement 40 marks

a) Academic Qualification: 30 marks

i) Master degree in relevant subject *Below 60%* *10 marks*

60% & above *15 marks*

ii) NET/SLET *05 marks*

iii) M. Phil in the relevant subject *05 marks*

iv) Ph.D. In the relevant subject *05 marks*

b) Experience: *05 marks*

Once mark per completed year of teaching experience in higher education after attaining the basic qualifications upto the closing date.

(Subject to maximum of 05 marks)

c) Co-curricular Activities/Sports *05 marks*

i) NCC 'C' Certificate *03 marks*

ii) NCC 'B' Certificate *02 marks*

iii) Sports (Participation in any International level event)
03 marks

iv) Sports (participation in any National Level event)
02 marks

(subject to maximum of 05 marks for (i) to (iv) above).

2. Interview: *60 marks"*

He further submitted that petitioner should have been granted 5 marks for NET and had those marks been granted, the petitioner would have get more marks than the respondent No.5. Similarly, the petitioner has erroneously been given 1 mark i.e. one mark per completed year of teaching experience in higher education after attaining the basic qualification up to the closing date, whereas petitioner should have been granted 3 marks as she has completed 3 years of teaching experience.

Mr. R.N. Sharma, Advocate & Mr. Anurag Goyal, Advocates for respondent Nos.2 to 3 & 5 submitted that in case the contention of the petitioner is accepted then only effected candidates would be one whom he is representing. He submitted that respondent No.5 had also not cleared

NET test but had qualified for Ph.D before 31.05.2009. He submitted that since respondent No.5 had obtained first division in post-graduation i.e. M.Sc. Geography, therefore, he has been awarded 15 marks, 5 marks for M.Phil, 5 marks for Ph.D and 2 marks for experience vis-a-vis, the petitioner has obtained only 16 marks i.e. 10 marks for M.Sc., 5 marks for Ph.D and 1 marks for experience. He has further submitted that petitioner cannot be permitted to challenge the clarification on the ground that he has already appeared for the interview and, therefore estopped to challenge the criteria and in support has relied upon judgment rendered in *Madan Lal and others Vs. Jammu and Kashmir 1995(2) SCI 880 Para 10*.

He further submitted that in case arguments of the petitioner is accepted, then the respondent No.5 should also be given 5 marks for NET and in this process, respondent No.5 would get 32 marks and the petitioner would get 21 marks and, therefore, the petitioner would not be successful in seeking appointment, even in this manner.

Mr. H.N. Mehtani, learned counsel appearing for Haryana Public Service Commission submits that clarification was in consonance with the conditions provided in the advertisement and, therefore, there is no change in the criteria and in support he has relied upon judgment dated 21.02.2013 rendered in CWP No.18254 of 2011 titled as Dr. Sneh Lata Sharma Vs. Haryana Public Service Commission & ors. to contend that such type of clarification has already been upheld by this Court.

This Court had directed respondent No.1 to produce the record of the selection of respondent No.5. Record of the respondent No.5 including that of the petitioner has been produced today in the Court in sealed cover and under the direction of this Court, has been opened and it

has been found that respondent No.5 got 27 marks and petitioner got 16 marks, as noticed above.

I have seen the original mark sheet handed over to me and same is in consonance with the statement made by learned counsel for respondent Nos.1 to 3 & 5.

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

Though the contention of Mr. Sudhir Mittal, Advocate for the petitioner appears to be attractive but unfortunately does not have any substance concededly the petitioner cleared NET test on 24.06.2012 much beyond the date of the interview i.e. 24.08.2011, whereas result has been declared on 12.09.2010, therefore, the petitioner could not have been awarded 5 marks.

Submission, that candidates who have cleared Ph.D before 31.05.2009 are deemed to have cleared NET Test and, therefore, Haryana Public Selection Commission should have awarded 5 marks against the column of NET, is, fallacious, nonetheless, is not acceptable as the aforementioned arguments is not based upon logic, much less, common sense. Assuming for the sake of arguments, petitioner had been granted 5 marks against the column of NET then respondent No.5 would have also secured more marks than the petitioner under this category & as well as qua non grant of 2 marks for experience. The petitioner has been rightly awarded one mark vis-a-vis teaching experience as the respondent No.1 has taken into consideration the period of regular service and not that of part time lecturer. Assuming for the sake of arguments, period of part time Lecturer had been included, even then the petitioner would have secured

two more marks i.e. 18 in total therefore would not have been able to secure the employment as the last candidate obtained 27 marks for personal achievement.

I am confining my finding to the marks obtained in the interview as the submissions have been made to awarding of the marks in personal achievements. As regards the judgment of Hon'ble Supreme Court of India in Rekha Chaturvedi's case, Supra, though there is no doubt to the ratio descendi but the fact remains that respondents have not changed the criteria before the date of interview but only clarified with regard to the obtaining of Ph.D. degree by cut off date, much less, enrollment with Ph.D course.

In view of what has been observed above, there is no merit in the present writ petition. Resultantly, present writ petition is dismissed.

NOTE:- The record of the Selection Commission has been opened under the direction of this Court. High Court is directed to put the record in the sealed cover and handed over to Mr. H. Mehtani, Advocate for Haryana Public Service Commission.

July 07, 2015
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(AMIT RAWAL)
JUDGE